

July 7, 2011

To: Janis Snoey
From: John Bower

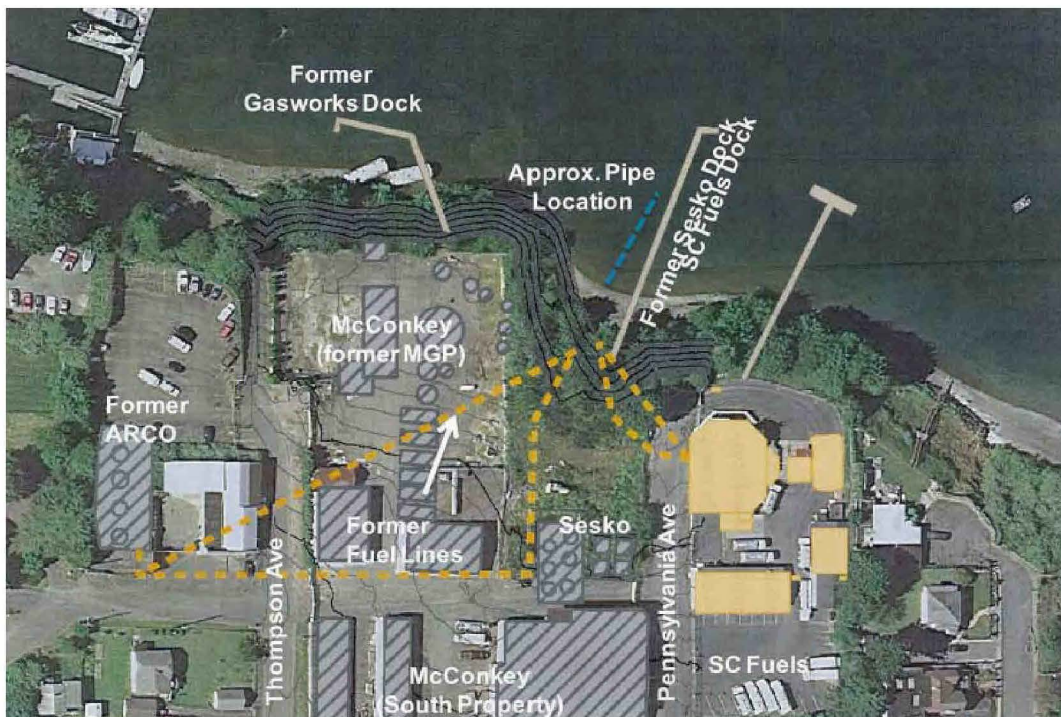
Preliminary Draft Report: Old Bremerton Gas Works Lease History

1.0 Introduction:

At the request of Janis Snoey, AAG, I have prepared this report in preparation for negotiations and possible administrative actions relating to an “Incident Action and Time Critical Removal Action” at the Old Bremerton Gas Works Site. The removal action was undertaken as a result of product and intermittent oil sheens being released to Port Washington Narrows and Dyes Inlet from an abandoned 12-inch concrete pipe.

The U.S. Coast Guard defined the site in the removal action work plan to be upland and shoreline environments affected by waste originating from the gas works site.¹ Figure 1 is taken from the Site Location Map for this work plan.²

Figure 1



¹ Anchor QEA, LLC and Aspect Consulting: November 2010. Final Work Plan: Former Bremerton MGP Site Incident Action and Time Critical Removal Action. Prepared for the U.S. Coast Guard.

² Ibid, Figure 1.

This figure shows the approximate location of the 12 inch concrete pipe. Other figures in the work plan also identify the location of a City of Bremerton storm water outfall in relation to the 12 inch concrete pipe (Figure 2).³

Figure 2



A review of historical information has identified, besides the former gas plant, three petroleum tank farms. All of these facilities used the harbor area under lease from the State. A portion of the 1947 Sanborn Fire Insurance Map situates the upland location of the harbor area lessees in the area of interest: the Richfield Oil Company located west of Thompson Avenue had 4 oil tanks; the Western Gas Company located east of Thompson Avenue on the shoreline and had several oil and gas tanks as well as a gas holder; the Lent's property located east of Thompson Avenue, west of Pennsylvania Avenue and south of the Western Gas Company, had six fuel tanks; and the General Petroleum property located east of Pennsylvania Avenue had five oil tanks on ground as well as a grease and oil holding area (Figure 3).⁴

Figure 4 is a 1981 aerial photograph found in DNR lease jacket 22-001523 which shows the location of the tank farms in relation to the Western Gas Company site. Figure 5 shows how the area had changed by January 1986.⁵ The Tidewater Oil Tank farm and the Richfield dock and pipeline had been removed. The marina had been rebuilt. But it should also be noted that the General Petroleum, the Lent's Inc, and the Richfield Tank Farms still remained. A comparison of Figure 4 and 5 shows that significant dredging had occurred in order to build the new marina,

³ Ibid. Figures Attachment Figure 2.

⁴ Sanborn Fire Insurance Maps retained at the Washington State Library.

⁵ Photograph in DNR Aquatic Resources Division File 22-002332 Folder 2.

and that bulkheads (at the marina office building and parking lot) and shore stabilization had been placed. Figure 6 is a 2006 Department of Ecology Shoreline photo that shows the same area in 2006. Only the Mobil Oil tank farm remains, the Richfield Oil and Lent's tank farms have been removed.

Figure 7 locates these facilities on a 2011 ESRI map in relation to the leased harbor areas. The only petroleum tanks that remain in the area of interest are located on the former General Petroleum property. By comparison with the Sanborn Fire Insurance Map, I have identified the historical location of these tank farms. Historical lease areas are also located, and no improvements currently exist in the harbor area.

Based on this evidence, I have defined the area of interest for this preliminary draft report is harbor area fronting government lots 6 and 7, section 11 and government lot 1, section 14, township 24 north range 1 east. The State has leased the harbor area for an extended period of time, and currently consists of harbor area the State leases to Seven Js Investments once leased by the Tideland Oil Company, the Richfield Oil Corporation and the Western Gas Company; unleased harbor area formerly leased by Lent's Inc. and Wilkins Distributing; and unleased harbor area formerly leased by the General Petroleum Corporation and the Socony-Mobil Oil Co., Inc.

Figure 3

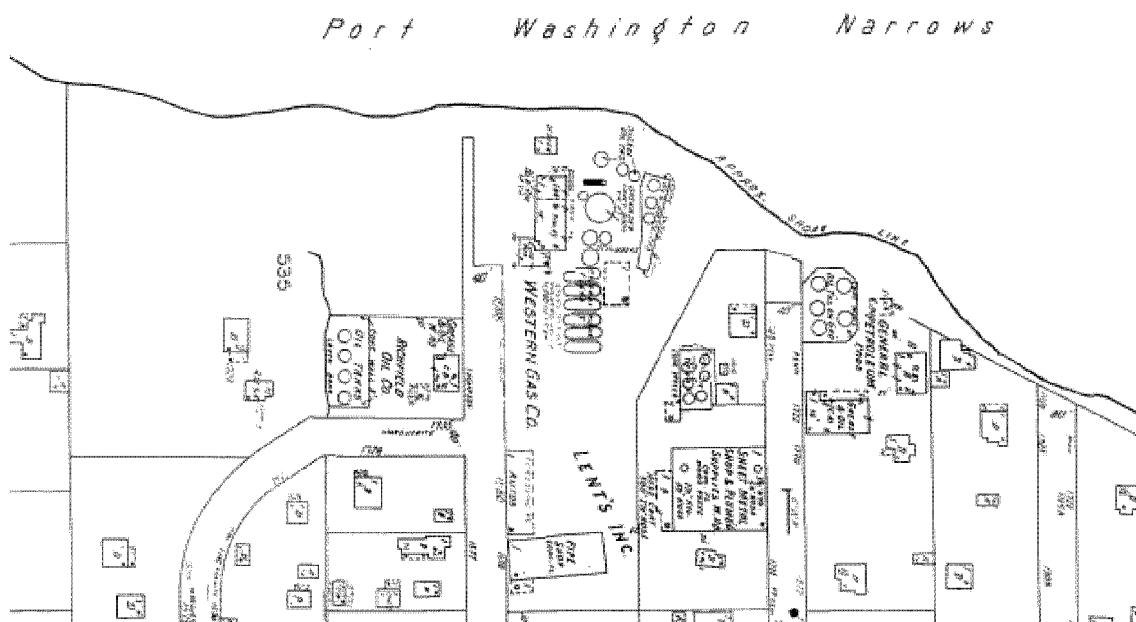


Figure 4

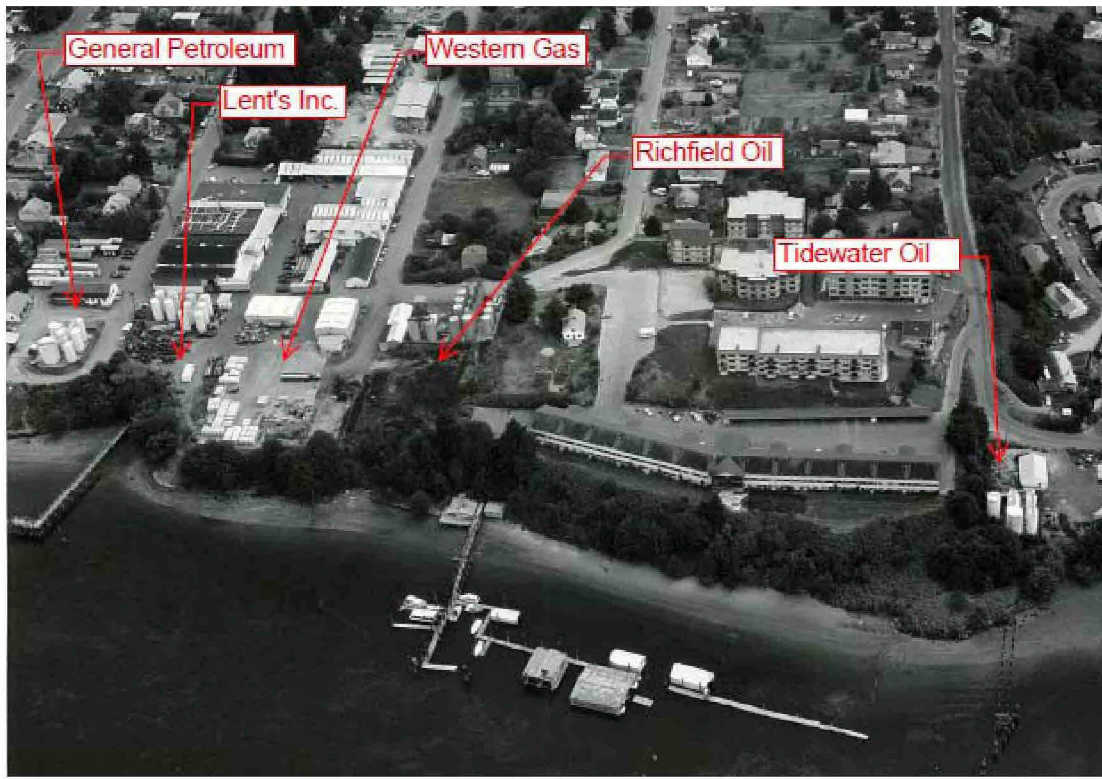


Figure 5: 1986



Figure 6: 2006



Figure 7



This report is therefore segregated into four parts: Seven Js Investment harbor area that includes both the lease history for Tideland Oil, Richfield Oil and Western Gas; the Lent's harbor area and the General Petroleum harbor area. Section 4 of this report also includes a discussion of the City of Bremerton sewer line as it crosses and fronts harbor area for Lots 6 and 7, Section 11 and lot 1, Section 14, township 24 north, range 1 east, and crosses both the harbor area and uplands in this area of concern.

This report chronicles the use of State Owned Aquatic Lands that have been authorized by DNR. DNR authorized uses in the Port Washington Narrows between Bremerton Waterway No. 4 and a point just west of Pennsylvania Avenue. The authorized uses consisted of petroleum transfer facilities, a coal unloading wharf, marinas, boat building and City of Bremerton sewer lines. This report only considers activities within an “area of concern” defined from federal contamination release reports, and a review of historical documentation identifying uses in the area. This draft historical Lease History report relied on

- Documents found in DNR Aquatic Resources Division Lease Jackets
- DNR Harbor Line plats and index plates
- Ecology historical shoreline photos
- Sanborn Fire insurance maps
- Miscellaneous material found on the internet

This report is not a comprehensive history of this Port Washington Narrows site. This report focuses solely on the leases DNR issued to authorize activities on Bremerton’s state-owned aquatic lands. I have scanned documents from existing leases, harbor area plats, and index plates. I have also acquired scans of some Sanborn Fire Insurance maps, and have downloaded various Ecology Shoreline photos. DNR has scanned entire lease jackets for this site, and several jackets have yet to be scanned.

A comprehensive report would need to include the history Bremerton upland use in order to identify sources of contamination, including the operation of the several tank farms, the location of petroleum pipelines, and the location of all City of Bremerton sewer lines in relation to the pipelines.

A comprehensive report would require the inclusion of the following sources of information at a minimum:

- City of Bremerton records held at the Washington State Archives and Washington State Regional Archives.
- Corps of Engineers records on file at the Seattle District Office, Seattle, including the following permit files for the Port Washington Narrows: City of Bremerton, Cascade Natural Gas, Federal Works Agency, Lent’s Inc., Signal Oil Company, (b) (6); Tide Water Associated Oil, and the Union Oil Co.
- Department of Ecology, and Washington State Pollution Control Commission records held at the Washington State Archives
- Corps of Engineers records held at the National Archives, Seattle

- Local museums and libraries as needed

Additional research should await AGO review of this report and supporting material, however.

Conclusions: The Washington Gas Company area has an extensive history of tank farms, pipelines, petroleum transfer docks, marinas, sewer lines, and upland industrial use. Just reviewing DNR lease jackets indicate just how complicated. Documents are strewn throughout these lease jackets that belong in another lease jacket. Documents have been filed out of chronological order. Extraneous documentation has been filed in the jackets. Lease jackets often cover actions that are unrelated to the area of interest. It has taken and will take significant effort to try to make sense of all this evidence.

The pipelines, that have crossed the uplands onto State owned harbor area, have been removed, but it is unknown where the upland pipelines are located. The storm water outfalls for these industrial facilities have not been located. The City of Bremerton has constructed several sewer lines within the harbor area, but it is unclear if the State has issued an easement for all of them. How the marina dredging project has affected contamination releases is not known, nor is the placement of erosion control mechanisms. After reviewing the extensive number of harbor area use authorization files for this area, it is going to be difficult to evidence what DNR knew and when did it know it.

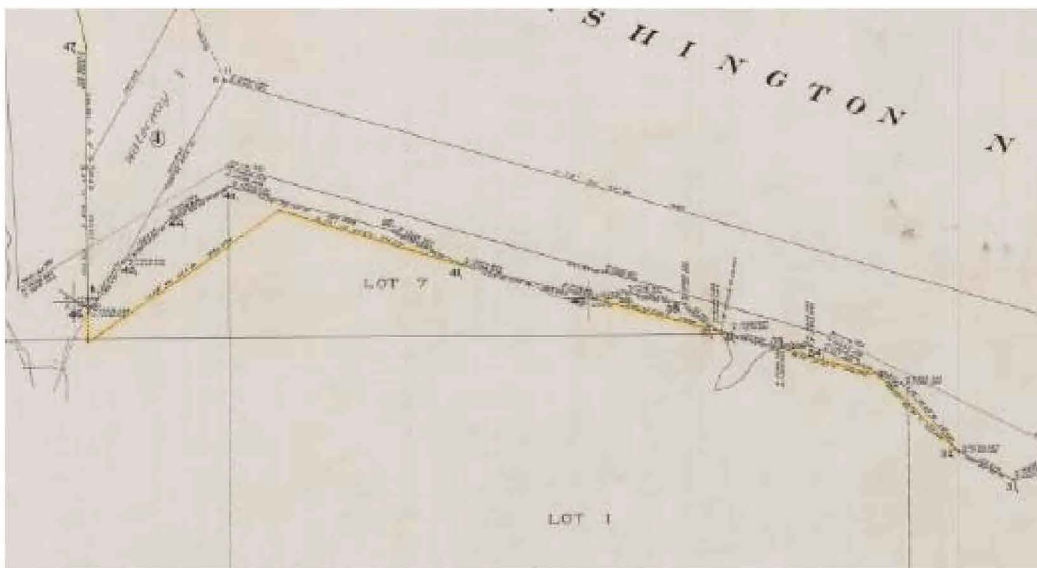
DNR leases prior to the 1970's are materially different in form to those that followed. In the 1970's new lease forms were written, often with significant requirements and indemnification clauses. How effective these new contract terms in protecting the State is a legal issue. What remedies are available is also a legal issue.

The State is probably a responsible party. The extent of that liability is an open question, and significant more work is required.

2.0 Harbor Area Platting and Upland Ownership: On December 23, 1858, the United States surveyed Township 24 North, Range 1 East under contract 27 to Berry & Carlton, meandered the shoreline, and established lot 7 in Section 11, and lots 1 and 2 in Section 14. The United States deeded lot 7 by a cash entry patent on October 10, 1866, and lots 1 and 2 by a cash entry patent dated May 15, 1869. Under the Article XVII, Section 2 of the State Constitution, the State disclaimed all right, title and interest to all tide, swamp and overflowed lands, patented by the United States prior to statehood. The Washington State Supreme Court has interpreted this article to mean that upland ownership extends to the meander line or the ordinary high water line whichever is further water ward.

In 1913, pursuant to the State Constitution and Washington State Supreme Court decisions, the Board of State Land Commissioners established harbor area fronting lots 6 and 7 Section 11 and lots 1 and 2 Section 14, and placed the inner harbor line along the meander line or line of mean high tide (Figure 8).⁶ This is the area of interest as discussed in this report. The yellowed dash line shows the location of the meander line located shoreward of the line of mean high tide that was not used as the inner harbor line. The line located immediately water ward of the yellow line was defined as the inner harbor line. As a consequence, no state owned tidelands front Sections 11 and 14, Township 24 North, Range 1 East.

Figure 8



For example, the department had sent correspondence clarifying to upland owners that no tidelands front lots 6 and 7, section 11, and lots 1 and 2, Section 14. On September 22, 1930, the Commissioner informed Walter F. Meier that

“your application to purchase tidelands in front of Bay View Garden Tracts at Bremerton, could not be filed, as no tide lands exist at this point, and I am

⁶ This Figure was taken from DNR Index Sheet tf18-062.

therefore enclosing herewith Commissioner's check No. 26597, being a return of your special deposit.

I am also enclosing a blue print of a portion of Bremerton Harbor at this point, on which you will find, in red, the inner and the outer harbor lines, and you will note that the inner harbor line is coincident with the line of ordinary high tide, leaving no tide lands between said line and the upland."⁷

On April 22, 1942, the Assistant Commissioner advised James W. Bryan, Jr., Attorney for the Lent interests that no tidelands exist fronting tract 23 of (b) (6) Garden Tracts in lot 1, section 14 and Pennsylvania Avenue:

"The state survey shows no state owned tide land at this location. The inner harbor line follows the outer line or the upland ownership, i.e., it follows the meander line where it is farther out, and the line of ordinary high tide where it is the further out. This has the effect of making the inner boundary of the harbor area coincident with the outer boundary of the upland ownership. Hence, the state has no tide land at this location to sell."⁸

The uplands fronting this harbor area have been subject to plats and replats. Two plats in particular have been used in describing leased harbor areas. On June 21, 1921, a plat of Bay View Garden Tracts was recorded with the Kitsap County Auditor and filed in Kitsap County's Book 4 of plats page 94 (Figure 9). On December 23, 1931, the Supplemental Plat of Bay View Garden Tracts was recorded with the Kitsap County Auditor and filed in Kitsap County's Book 5 of plats, page 19 (Figure 10). In a July 13, 1946 Chief Engineer's report to the Commissioner of Public Lands, the relationship of the plats to harbor area descriptions is discussed:

"The Supplemental Plat of Bay View Garden Tracts was recorded December 7, 1931 (sic) and comprises all of lots 1, 2, 3, 4, 5, 9, 10, 11, 12, 13 14, and 15 of the former plat of Bay View Garden Tracts. Former lots 11 to 15, inclusive are now Tracts 1 and 11. The former street Renn Stroll has been platted approximately 65 feet west of the former location. Additional changes have been made which are not pertinent to this application.

"The plats of Bremerton Tide Lands show the inner harbor line running along the high water line and the government meander line at this location, and there are not platted tidelands."⁹

⁷ Commissioner of Public Lands to Walter F. Meier: September 22, 1930. DNR Aquatic Resources File Jacket 22-000952).

⁸ Assistant Commissioner of Public Lands to James W. Bryan, Jr.: April 22, 1942. DNR Aquatic Resources File Jacket 22-001156. See also correspondence in DNR Aquatic Resource Division Lease Jacket 22-001153 between the Commissioner and the Bremerton Title Company regarding the location of the ordinary high tide line. The Commissioner responded to the title company that the courses in front of these tracts on the harbor line plats tabulation were set "along the ordinary high tide line."

⁹ Chief Engineer: July 13, 1946. Report to Commissioner of Public Lands. DNR Aquatic Resource Division Harbor Area Lease Jacket 22-001386.

Figure 9

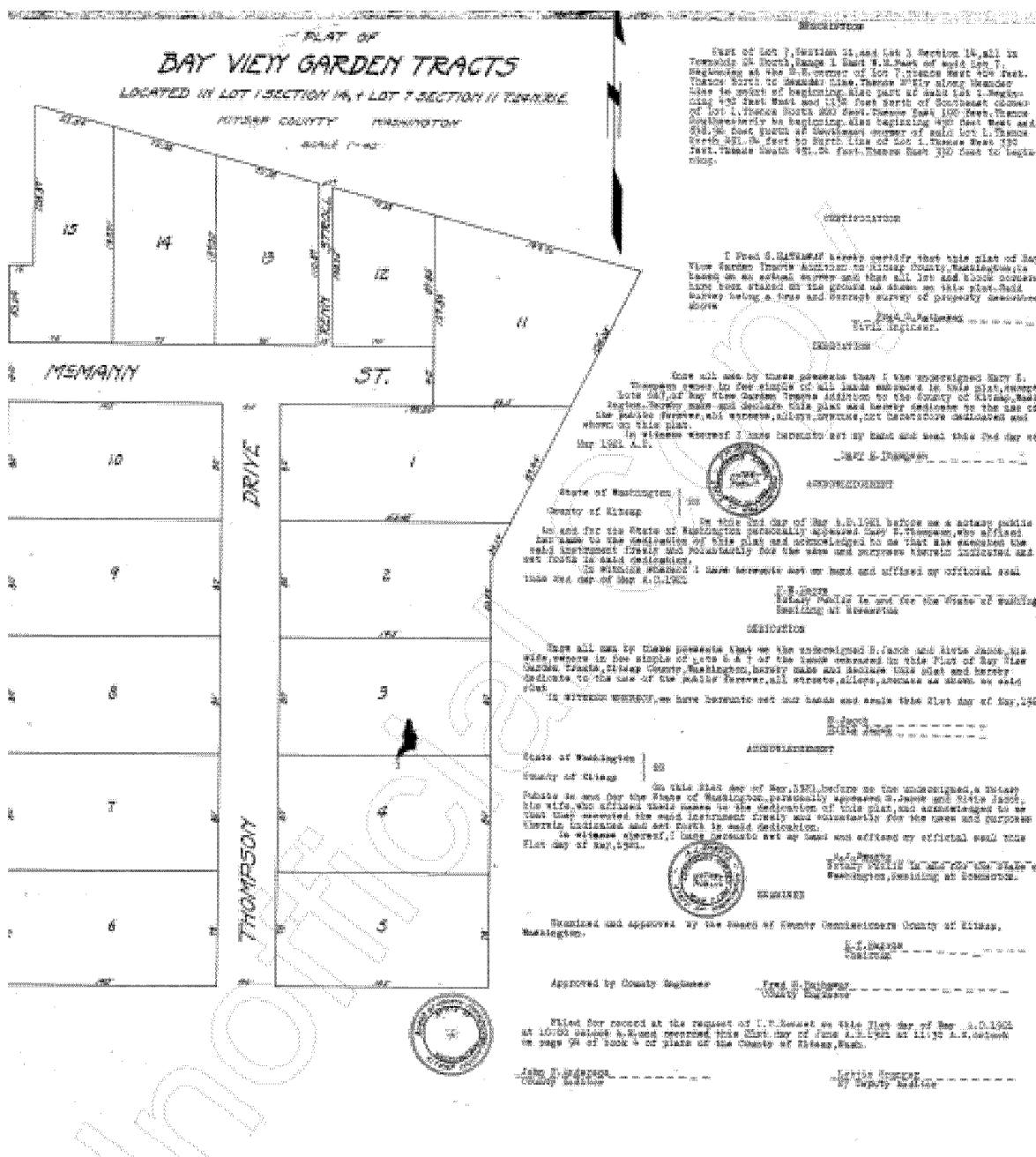


Figure 10

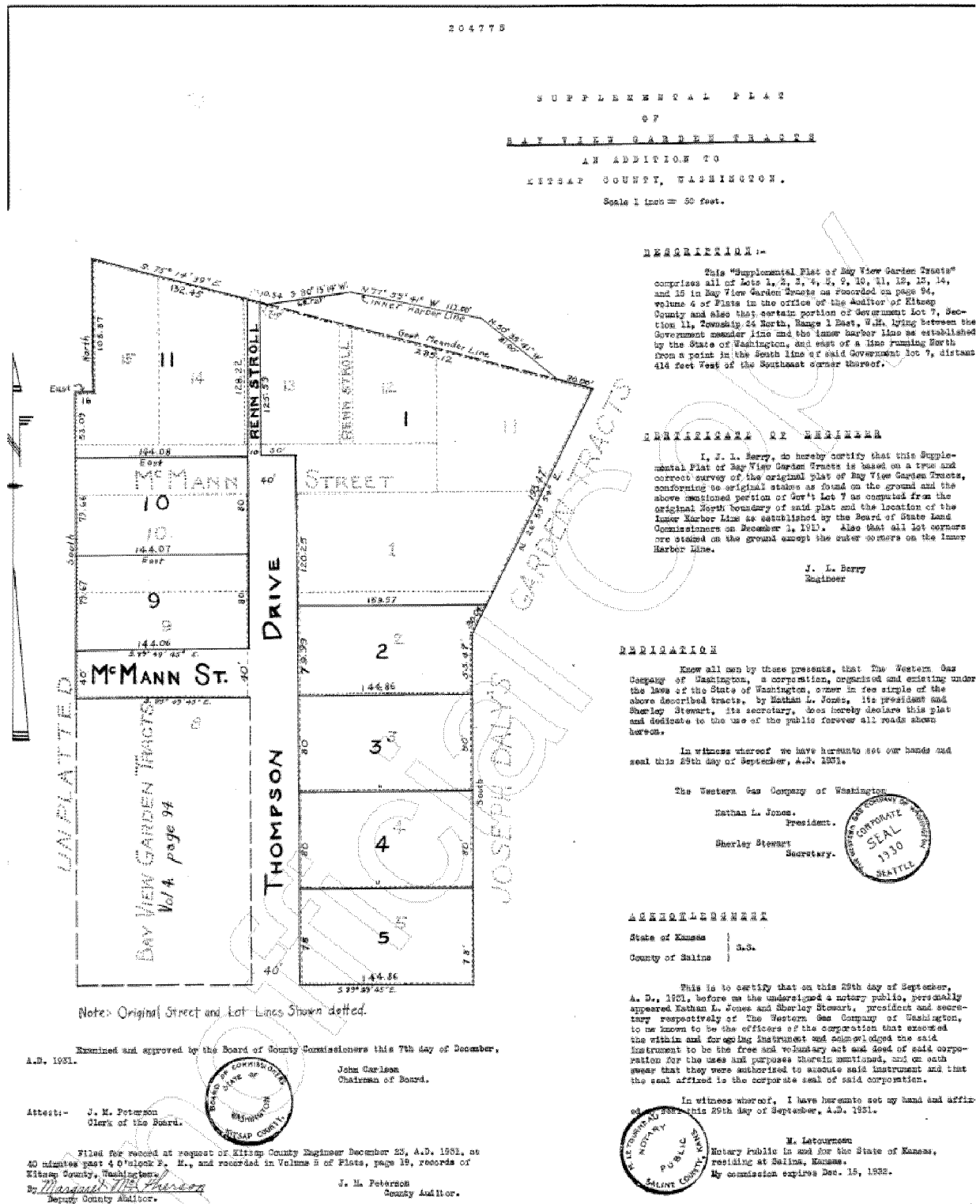


Figure 11

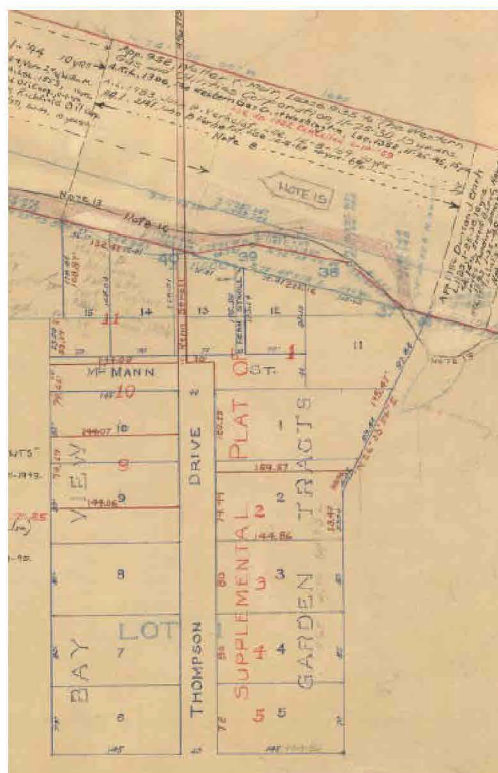
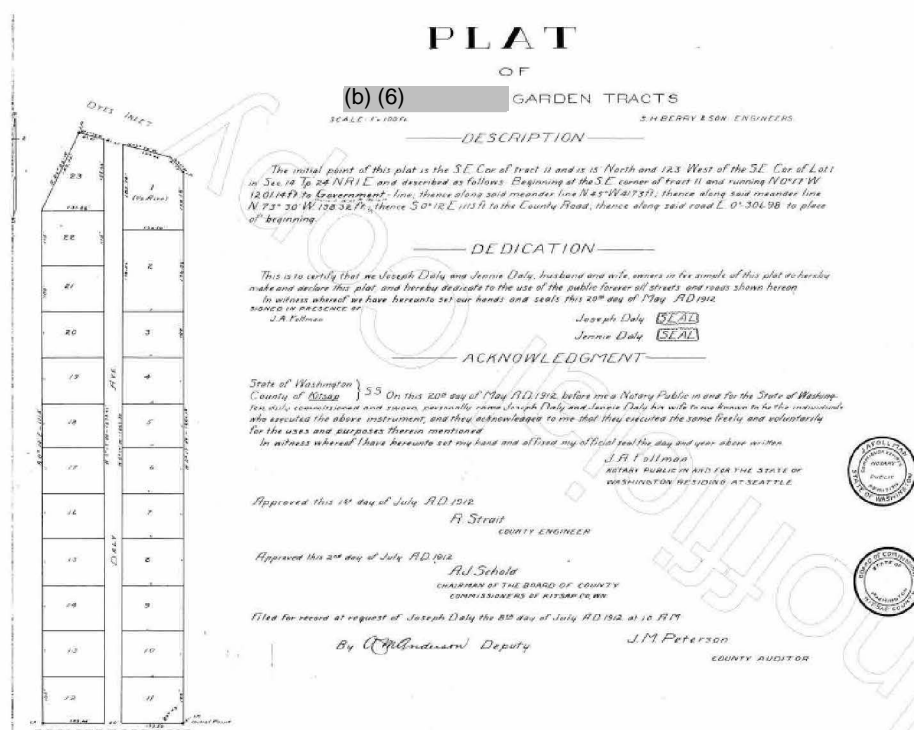


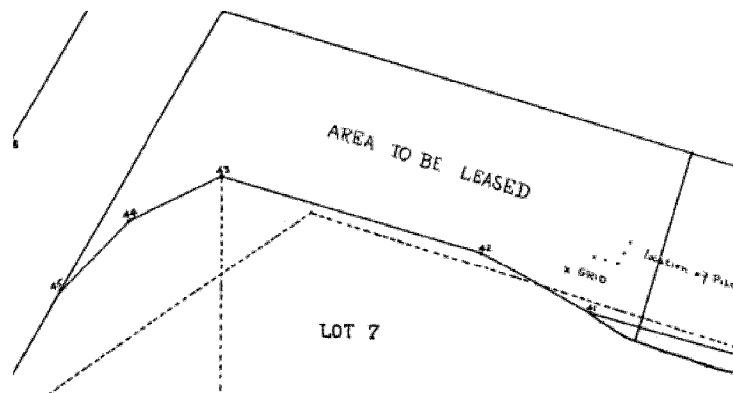
Figure 12



Harbor Area Leasing History

3.0 The Seven Js Investment Harbor Area: The Seven Js Marina is located 3.487 acres of harbor area fronting Government Lots 6 and 7, Section 11, Township 24 North, Range 1 East, W.M., between Waterway No. 4 on the west and Renn Stroll on the east. On October 9, 1934, (b) (6) applied to lease (22-001074) the harbor area fronting parts of Lots 6 and 7 Township 24 North Range 1 East, or between State Waterway No. 4 and the west line of Lot 15 of the 1921 plat of the Bay View Garden Tracts for fifteen years and for the purpose of boat moorage. On October 30, 1934, the Commissioner ordered the issuance of a lease to (b) (6) for approximately 3.3 acres of harbor area, and described in that order the proposed improvements to be placed there: “a dragway or grid for hauling small boats out of the water.” Figure 13 is taken from the lease exhibit (b) (6) filed with his application and was approved by the Commissioner’s Order.

Figure 13



The Department issued Harbor area lease 1044 for a term of 10 years commencing on November 1, 1934 for the purpose of “building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce, as may be determined by legislative enactment or by rule of the Commissioner of Public Lands.” The lease provided that the improvements upon cancellation or termination of the lease would become the property of the State, and that the lessee “shall not make or suffer to be made any artificial filling in of said leased area or any deposit of rock, earth, ballast, refuse, garbage or other mater within such area, except as provided by law or as approved in writing by the Commissioner of Public Lands.” The lease also provided that (b) (6) “shall not sublet the whole or any part of said leased area except upon the written permission of the Commissioner of Public Lands.”

On October 21, 1944, (b) (6) applied for a release of approximately 2.0 acres of harbor area for ten years and for "industrial" purposes (22-001362). In the Report of Engineer dated December 2, 1944, several upland ownership conflicts with the application were described, with the end result that (b) (6) reduced his application "to include only the easterly 450 feet of the portion covered under Lease No. 1044." On February 21, 1945, the Commissioner of Public Lands executed lease 1312 with (b) (6) for a ten year term commencing on November 1,

1944.¹⁰ The lease area included the 450 feet of the eastern portion of the previous lease. As with the previous lease 1044, this lease was issued for the purpose of “building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce, as may be determined by legislative enactment or by rule of the Commissioner of Public Lands.” As with the previous lease, (b) (6) agreed not to fill or deposit any “rock, earth, ballast, refuse, garbage or other matter” in the lease area. The harbor area on the eastern portion of the (b) (6) lease area eventually became occupied by the Tidewater Oil Company and (b) (6).

The report also describes the improvements shown on “prints” offered by (b) (6) in lieu of exhibits to the application.

“The prints show a house near the inner harbor line, near the easterly end of the harbor area and a float walk running out to another float on which is located a workshed from which another float walk or cat walk is located running further out into the harbor area. These are probably the improvements included in those mentioned in the agreement with (b) (6).

“The prints also show a pipe line leading from Lot 11 on the Supplemental Plat of Bay View Garden Tracts. This line shows an apparent change which leads it into the extreme southwest corner of the adjoining harbor area tract to the east and then runs westerly into the harbor area covered by this application No. 1362, for the distance of approximately 30 feet, then turns toward the outer harbor line for a distance of approximately 240 feet, supported on piling and ends on the middle of a structure running east and west having a length of about 90 feet between two dolphins, being apparently a pipe line supported on piling with a cat walk on the shoreward side of it. The extreme westerly dolphin is about 115 feet from the easterly end of the harbor area desired.”¹¹

This portion of the harbor area was at one time home to petroleum terminals that serviced upland tank farms for the Tidewater/Phillips Oil Companies adjacent to the waterway, and the Richfield Oil Company located east of Renn Stroll.

¹⁰ Original harbor area lease 1312 filed in DNR Aquatic Resources Division Lease Jacket 22-001584.

¹¹ Chief Engineer: December 2, 1944. Report to Commissioner of Public Lands. DNR Aquatic Resource Division Lease Jacket 22-001362. Note that I have been unable to locate the “prints” described in this report.

3.1 Tideland Oil: Oil interests have leased 0.45 acres of harbor area fronting lot 6, section 11, township 24 north, range 1 east and Waterway No. 4 from the date of assignment from (b) (6) to the Petroleum Navigation Company on May 7, 1946 to May 6, 1976. The leasing chronology for this site:

22-001364	Lease 1348	(b) (6)	1946-1956
22-001364	Assignment	Petroleum Navigation Company	
22-001658	Lease 1615	Tidewater Oil Company	1956-1966
22-002027	Lease 2027	Philips Petroleum	1966-1976
22-002399	Lease 2399	(b)(6)	1976-1993
22-002332	Lease 2332	Port Washington Marina Owners	1993-2023
	Assignment	Seven J's Investments	2003
22-A02332	Lease A2332	Seven J's Investments	2004-2034

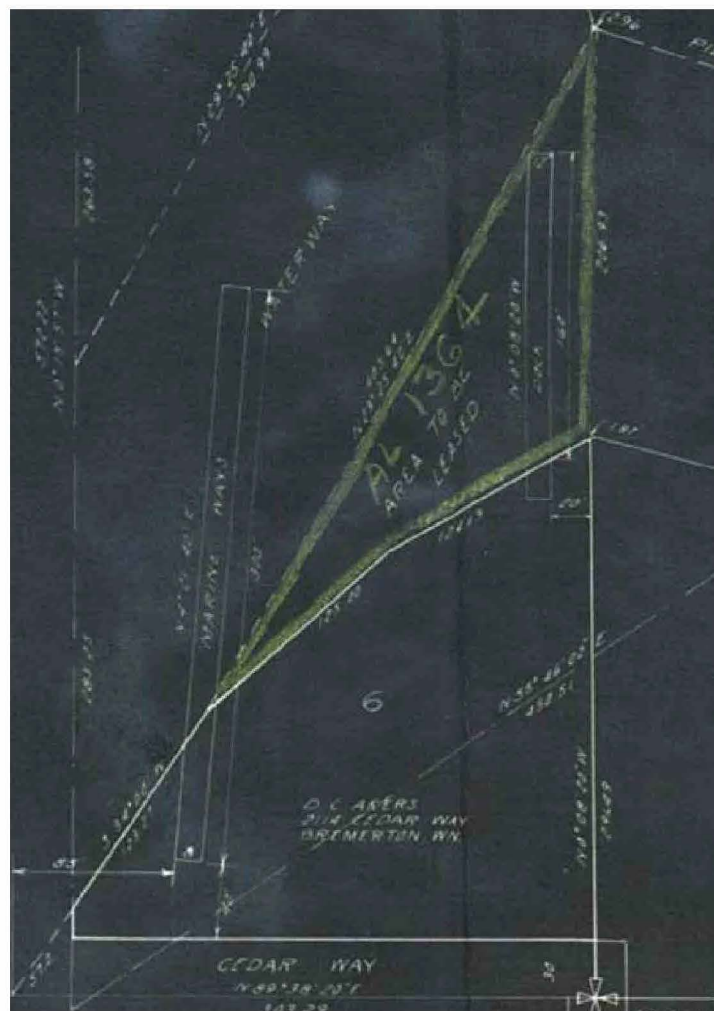
When (b) (6) decided to eliminate the western portion of lease 1044 that included the portion of the harbor area that fronted waterway number 4 and upland parcels owned by (b) (6), the (b) (6) decided to lease that harbor area. On December 21, 1944, (b) (6) applied to the lease the harbor area for a "workshop for repair of boats" on a portion of the harbor area that had been leased by (b) (6) under lease 1044. On September 18, 1945, the Department received Exhibit A depicting the harbor area to be leased, and the improvements planned to be placed in the harbor area. Figure 15 shows the geographic extent of the exhibit, while Figure 15 is a zoomed portion of the exhibit showing the improvements planned to be placed and the harbor area applied for. On October 27, 1945, the Department received from the Seattle District Corps of Engineers a notice that (b) (6) had applied for a permit to construct marine ways and a pier on Port Washington Narrows, near the foot of Naval Avenue. Enclosed with that notice was a print showing the location of the ways in relation to the federal pierhead lines, details of the marine ways and details of the wharf (Figure 16). On November 30, 1945, the Chief Engineer reported to the Commissioner that

"Satisfactory exhibits have been received showing the proposed improvements to be constructed. Said improvements consist of a pile and timber wharf, 14' wide, extending 160 feet into the harbor area and a marine ways 300 feet long and extending approximately 230 feet into waterway No. 4 which adjoins the harbor area applied for on the west. Since the marine ways is to be constructed with 40 pound rails laid on 8"x12" concrete footings on the bottom of the waterway and will not interfere with navigation, no objection has been made to the extension into the waterway. However it has been explained to (b) (6); that any improvement constructed in the waterway are place there at applicants own risk."

Figure 14



Figure 15

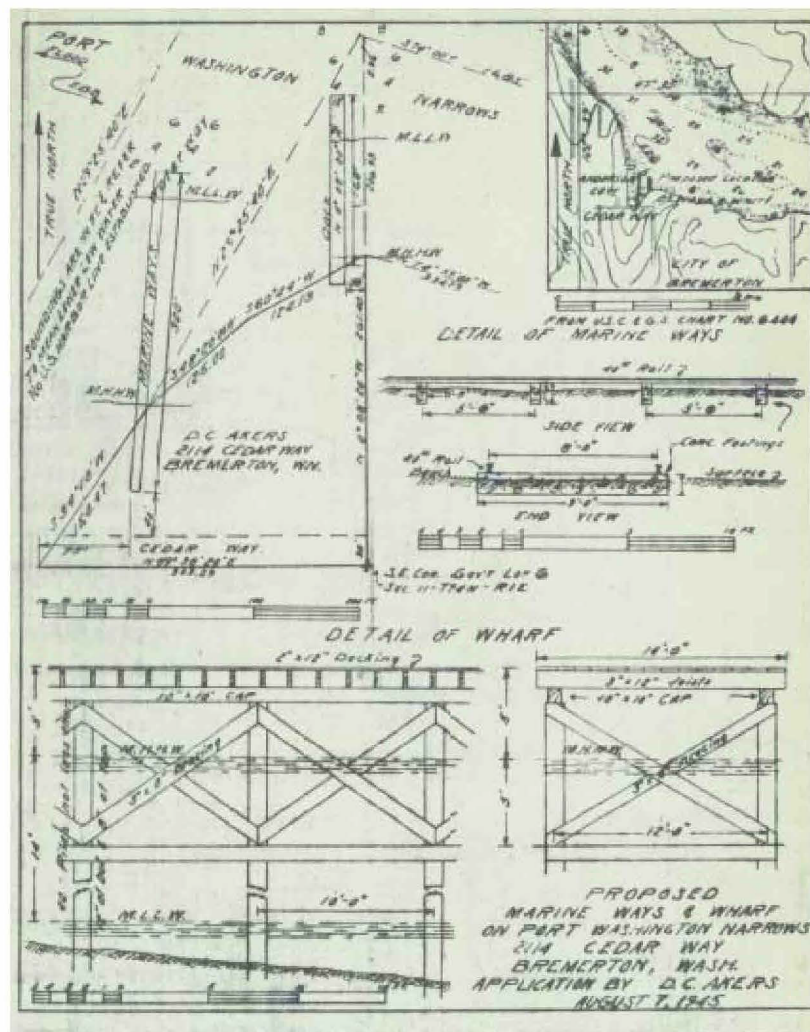


The department inspector reported to the Commissioner on January 4, 1946, that

“The harbor area has no improvements on it at this time, the beach shows sand inshore which has been sloughed on the beach from the uplands. The texture of the uplands is generally a layer of a sandy soil over heavy clay. This waterway amounts to a dead end sort of slough or small inlet and I question if it will ever be used or opened up for a waterway. Directly south of it is one of those wartime government housing projects.”

The Commissioner ordered the issuance of a lease under application 22-001364 on May 7, 1946. On July 23, 1946, the Department executed lease 1348 with (b) (6) for a 10 year term commencing on May 7, 1946. That lease was issued for the purpose of “building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce, as may be determined by legislative enactment or by rule of the Commissioner of Public Lands.

Figure 16



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The Department received a letter (undated) from the Tide Water Associated Oil Company on March 5, 1948:

“We hereby request a permit for the construction of wharf and three dolphins to be built in Anderson Cove, Port Washington Narrows, just outside of the corporate limits of the City of Bremerton, per enclosed Exhibit A & B and Exhibit C.

“We are purchasing the adjacent uplands, which is a portion of Gov. Lot 6, Section 11, T. 24 N, R. 1 E., W.M. and are securing an assignment from the Petroleum Navigation Company of their harbor lease #1348, which lease embraces a portion of the harbor area in front of said Lot 6 and upon which the proposed dock is to be built.

“For your information, we will soon apply for permit from the District Engineer, Seattle District, Corps of Engineers, Dept. of Army, to dredge the area in front of the dock for a length of approximately 175’, a width of approximately 75’ and a depth of minus 12’ M.L.L.W.”

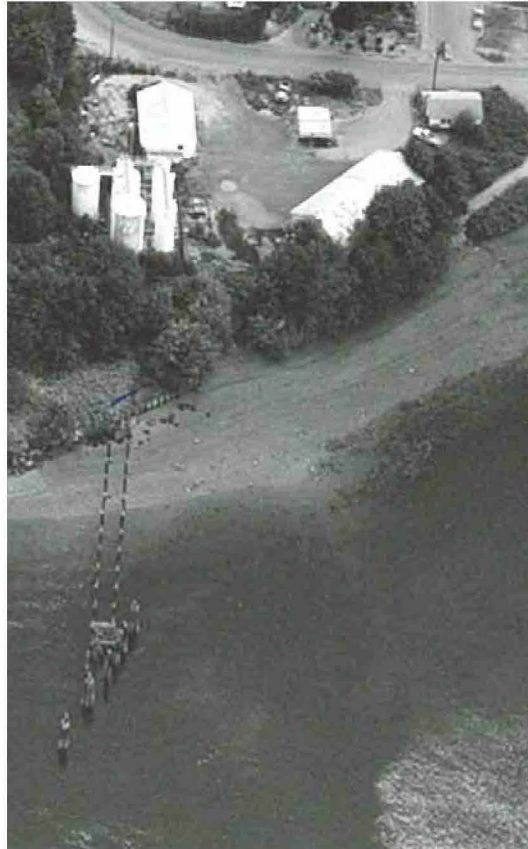
On March 8, 1948, the Commissioner approved, by Order, the assignment of lease 1348 to the Tide Water Associated Oil Company.

On April 5, 1956, the Tide Water Associated Oil Co. applied for a renewal of lease 1348 under application 22-001364. The exhibits filed under lease 1348 were brought forward.¹² The Departmental Inspection Report was written on June 13, 1956, and the inspector remarked that

¹² As noted above, I have yet been unable to locate these exhibits.

“Tidewater Associated Oil Company has oil and gasoline storage plant and other facilities on the abutting uplands & tidelands. Portion of dock are on desired H.A. This is a narrow structure supporting pipelines for unloading tankers and barges. There are no other improvements.”

Figure 17:
A 1981 historical aerial photograph locates the wharf and dolphins in relation to the Tide Water tank farm and lease area¹³



The Commissioner ordered the issuance of a lease to the Tide Water Associated Oil Company on August 3, 1956. The Department issued lease 1615 for a ten year term commencing on May 7, 1956. As with lease 1348, lease 1615 was issued for the purpose of “building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce, as may be determined by legislative enactment or by rule of the Commissioner of Public Lands.” The lease also provided that the improvements upon cancellation or termination of the lease would become the property of the State, and that the lessee “shall not make or suffer to be made any artificial filling in of said leased area or any

¹³ I have not been able to locate within DNR records the Exhibits filed by Tide Water, or the Corps permit application or permit in the file. The 1981 aerial photograph may be found in DNR Aquatic Resources Division Lease Jacket 22-002523.

deposit of rock, earth, ballast, refuse, garbage or other mater within such area, except as provided by law or as approved in writing by the Commissioner of Public Lands.” The Department was notified on August 31, 1956, that the corporate name of the Tide Water Associated Oil Company had been changed to Tidewater Oil Company.

On April 18, 1966, the Tidewater Oil Company applied for a lease renewal (22-002027). The Department Inspector made a report on June 28, 1966, and reported that

“There is a dock 100 feet long by 10 feet wide extending out in the harbor and two dolphins at the end of the dock.

“There are petroleum pipelines extending from the end of the dock to the Tidewater Oil Company bulk plant on the abutting uplands.”

The Philips Petroleum Company advised DNR that it had purchased portions of the Tidewater Oil Company on July 15, 1966. DNR responded to Philips on August 3, 1966, that since it had acquired Tidewater interests, the new lease should be issued in its name. On September 16, 1966, the Commissioner approved, by Order, the assignment of lease 1615 to the Phillips Petroleum Company; and on September 21, 1966 ordered the issuance of a release to Phillips. DNR issued lease 2027 to Philips for a ten year term commencing on May 7, 1966. (b)(6) (b)(6) informed DNR that he had acquired the Phillips’ plant, and requested a transfer of the harbor area lease to him on July 16, 1975.¹⁴

On July 13, 1976, (b)(6) applied for a release of harbor area lease 2027 for a ten year period (22-002399). (b)(6) claimed the dock and approach as improvements. On February 23, 1977, the Commissioner executed harbor area lease 2399 for a ten year term commencing on May 7, 1976, for the “purposes of building and maintaining wharves, docks and other structures for the convenience of navigation and commerce.” (b)(6) agreed under

- Section 4.2, to restrict use of the harbor area to conform to applicable laws and regulations of any public authority; remove no valuable material; and not fill in the leased area or deposit any rock, earth, ballast, refuse, garbage or other matter except as approved by the State.
- Section 5.2 (1), to assume responsibility to maintain the improvements regardless of ownership in as good condition and repair as originally constructed, except for reasonable use. Other significant provisions of the lease included:
- Section 5.2 (2), to not

“allow debris or refuse to accumulate on the leased premises, caused either by himself or any person authorized on the premises by the Lessee. Failure to comply with this provision shall be cause to permit the Lessor to remove the debris and refuse and collect the cost of such removal from the Lessee and/or cancel this lease.”

¹⁴ I have found correspondence in DNR Aquatic Resources Division lease jacket 2027 that the assignment to (b) took place, but have not been able to locate the assignment documents.

- Section 5.3 (1), that “The premises have been inspected by the Lessee and are accepted in their present condition. Lessee agrees to defend and hold Lessor harmless from any and all claims suffered on the premises, or arising out of operations on the premises.”
- Section 6.8 (1), that failure to perform any requirement or obligation, the State would have the option to correct that obligation after a thirty days’ written notice to be reimbursed by the (b)(6)
- Section 6.8 (2), that “In the event any violation or breach of the provisions of the lease is causing damage to the leasehold premises or the Lessee is utilizing the leasehold premises in a manner not permitted by the provisions of this lease, or in any case damages are occurring to the leasehold premises, the Lessor may immediately enter upon the leasehold premises and take such action as necessary to cease such damages or use. In the event the damages or use is occurring by reason of a violation or breach of the provisions of the lease, the Lessee shall be liable for all costs incurred by the Lessor by reasons of such violations. The Lessor, at its option may send notice to the Lessee of such violations and the Lessee shall immediately cease such use or violation and correct and remedy such violations.”

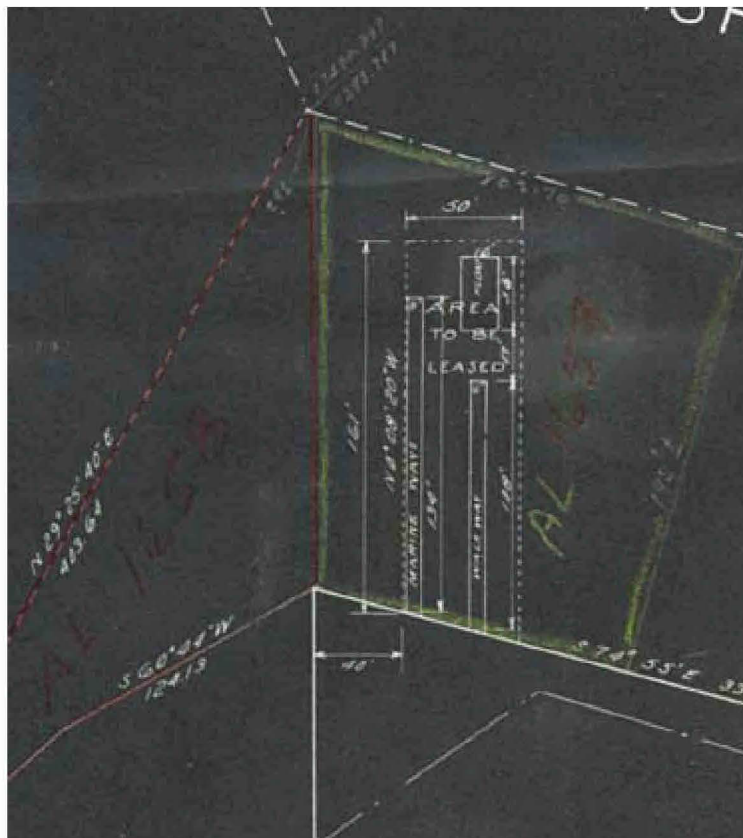
On September 13, 1982, (b)(6) informed the Commissioner that the Port Washington Group had acquired the option to purchase this lease I order that it be included in a proposed Port Washington Marina. (b)(6) requested that lease terms in lease 2399 be made consistent with leases 2332 and 2396. On May 23, 1983, lease 2399 was amended to amend its expiration date to November 1, 2004, and the lease rate was increased from 6% to 10%. On May 26, 1983, (b)(6) and (b)(6) assigned lease 2399 to Port Washington Properties. On December 14, 1983, DNR approved the assignment of lease 2399 to Port Washington Marina Condominium Owners Association, and approved the establishment of a “leasehold boat moorage condominium” for the marina.

3.2 (b) (6) Lease Area When (b) (6) reduced his lease area by eliminating the western portion of lease 1044, (b) (6) applied to lease 0.79 acres of harbor area for a “boat house and marine ways” on December 15, 1944 (22-001363). (b) (6) submitted to the Department an Exhibit A for his application on August 28, 1945. Figure 18 shows the entire exhibit to indicate the location of the lease area, Figure 19 is a blowup of a portion of that exhibit to show the proposed improvements.¹⁵

Figure 18



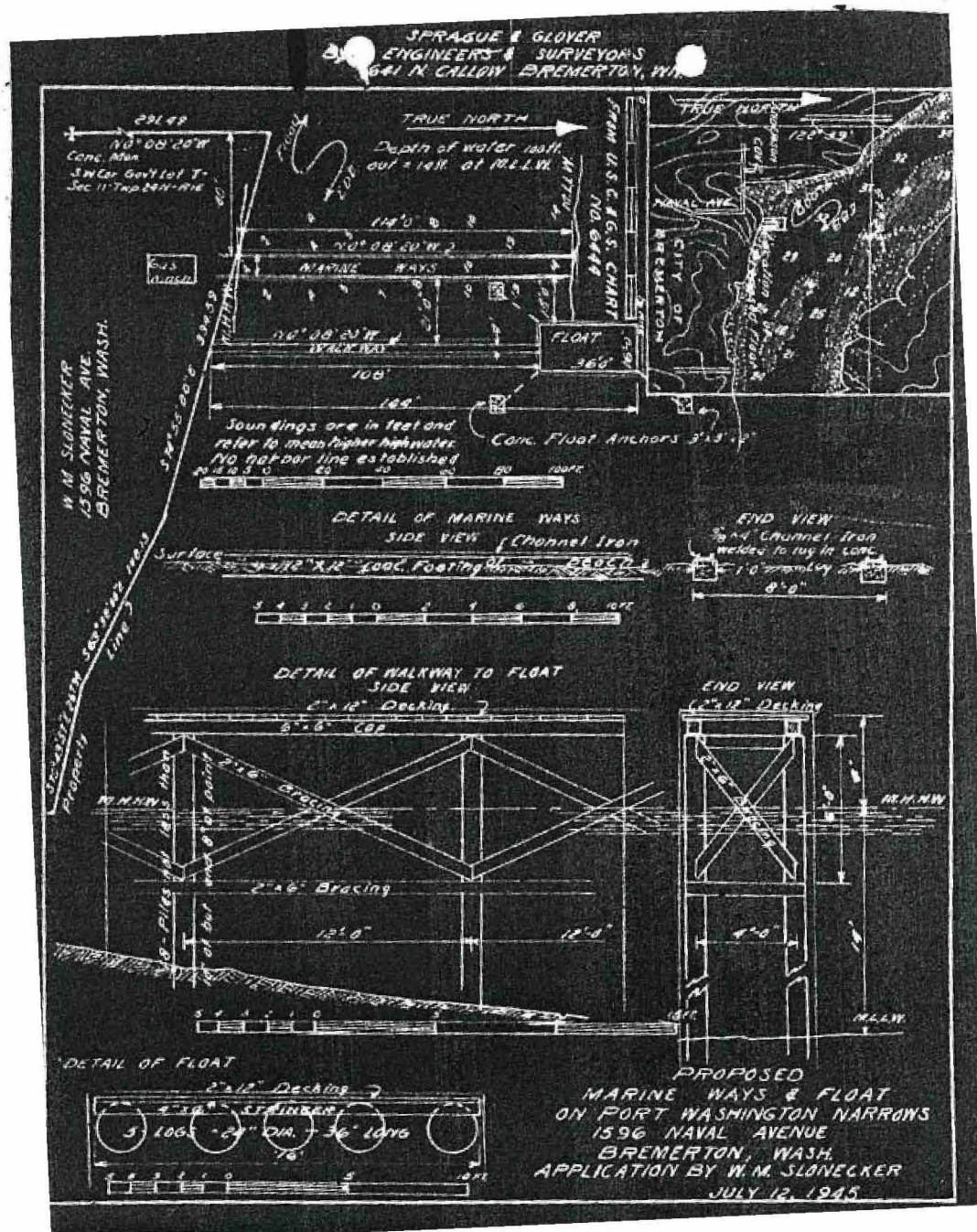
Figure 19



¹⁵ The Photostat of (b) (6) Exhibit A was found in DNR Aquatic Resources Division Lease Jacket 22-001658 for the Tidewater Associated Oil Co. application.

In July 1945, (b) (6) applied for a Corps of Engineers permit and Figure 20 was submitted to the Department of Public Lands as well as to the Corps of Engineers and shows the plans of the proposed improvements.¹⁶

Figure 20



¹⁶ Figure 21 was copied from a microfilm copy of DNR Aquatic Resource Division lease jacket 22-001363.

Both the (b) (6) application and the Departmental Inspection report dated January 4, 1946 noted that there were no improvements located in this harbor area. On March 26, 1946, the Commissioner ordered the issuance of a lease to (b) (6) under application 22-001363. The Department issued lease 1342 for a 10 year term commencing on March 26, 1946 for the “purpose of building and maintaining... wharves, docks and other structures for the convenience of navigation and commerce.” As with other leases of this period, (b) (6) was required not to make any artificial fill or deposit material of any kind in the leased harbor area without the written approval of the Commissioner or as provided by law.

(b) (6) and (b) (6) sublet the harbor area to (b) (6) and (b) (6), doing business as Peninsula Boat Works, on June 19, 1946 for the purpose of “operating and maintaining a boat works.” There is no indication in lease jacket 22-001363 of how long or how this boat works operated.

But by the time of the (b) (6) application to release the harbor area, on April 7, 1956 (22-001659), no improvements were claimed in the harbor area, and the claimed purpose of the application was to use the harbor area “for private use.” The department’s inspection report dated June 13, 1956, remarked that “There are some remains of old marine ways on tidelands (no value) and 5 to 6 old piling on H.A. (no value).” On December 12, 1956, the Commissioner order the issuance of a harbor area lease under application 22-001659. The Department issued lease 1625 to (b) (6) for a ten year term commencing on March 26, 1956. Again the lease was issued for the “purpose of building and maintaining... wharves, docks and other structures for the convenience of navigation and commerce.” (b) (6) was again not required to make any artificial fill or deposit material of any kind in the leased harbor area without the written approval of the Commissioner or as provided by law.

(b) (6).¹⁷ (b) (6) applied for a release of the harbor area in 1966 (22-002018). Harbor area lease 2018 was issued for a ten year term commencing on March 26, 1966. The lease was cancelled on March 23, 1972. In 1976, it appears that Sea Gate, Inc. applied to lease this harbor area (22-002396). The Department issued lease 2396 to Sea Gate, Inc. for a 28 year term commencing on November 1, 1976. The lease area as it existed in 1981 is shown on Figure 21, an aerial photograph found in lease jacket 22-002523. The remains of what appears to be remains of a portion of the marine ways and pilings constructed in 1946 are shown on this photograph. A portion of the Port Washington Property dock extends into the harbor area from the west. By 1988, the Port Washington Marina Owners Association requested the consolidation of leases 2332, 2396 and 2399. Lease 2396 was terminated on July 31, 1993 as part of a lease consolidation, and the harbor area was included in the lease area of 22-02332 that the Department has currently issued to Seven J’s Investments.

¹⁷ Much of the (b) (6) lease history is taken from microfilm copies of lease jackets 1363 and 1659. No microfilm copies of lease jackets 22-002018 and 22-002396 exist, and I have not yet pulled these files from the record center. I have used information registered on index plate tf18-018 and in other lease jackets for this paragraph. It should be noted that lease 2396 was used by Port Washington Properties commencing in 1983, and since the lease eventually was terminated and the harbor area became incorporated into lease 22-002332 on July 31, 1993.

Figure 21



3.3 The (b) (6) and Richfield Oil Leases: Richfield Oil sublet 0.75 acres harbor area fronting lot 7, section 11, township 24 north, range 1 east from (b) (6) and (b) (6) with (b) (6) and (b) (6) from 1942 to 1954. Between 1954 and 1974, Richfield Oil leased that harbor area directly from the State.

Harbor Area Leasing Chronology

22-001074	Lease 1044	(b) (6)	November 1, 1934-1944
22-001362	Lease 1312	(b) (6)	November 1, 1944-1954
	Assignment	(b) (6)	November 18, 1950
		(b) (6)	
	Assignment	(b) (6)	October 10, 1952
22-001584	Lease 1548	(b) (6)	November 1, 1954-1964
22-001584	Lease 1553	Richfield Oil Co.	November 1, 1954-1964
22-001971	Lease 1971	Richfield Oil Co.	November 1, 1964-1974
22-001974	Lease 1974	(b) (6)	November 1, 1964-1974
22-002332	Lease 2332	Port Washington Marina	November 1, 1974-2023
	Assignment	Seven J's Investments	December 11, 2003
22-A02332	Lease A2332	Seven J's Investments	December 1, 2004-2034

Figure 22

Figure 22 displays Kitsap County assessor's parcels over a 2009 aerial photograph and shows the relationship of the Richfield Tank Farm and the Harbor Area.¹⁸ The assessor's parcel identified on the map as 009-00 is the location of the former Richfield Tank Farm, currently owned by Kraig Enterprises. The Tank Farm was connected to the Harbor Area (8054) by a pipeline located over the western portion of 010-00 (a portion of the pipeline may have been located on parcel 3-098). Those two parcels are owned by Seven J's investments and Port Washington LLC respectively. The Harbor Area leased by Richfield is now a portion of the Seven J's Marina.

The (b) (6) and Richfield harbor area was originally part of the (b) (6) harbor area lease 1312. On February 21, 1945, the Commissioner of Public Lands executed lease 1312 with (b) (6) for a ten year term commencing on November 1, 1944.¹⁹ As with the previous lease 1044, this lease was issued for the purpose of "building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce, as may be determined by legislative enactment or by rule of the Commissioner of Public Lands." As with the previous lease, (b) (6) agreed not to fill or deposit any



¹⁸ The Assessor Parcel boundaries appear not to reflect the actual waterward boundary, or the inner harbor line.

¹⁹ Original harbor area lease 1312 filed in DNR Aquatic Resources Division Lease Jacket 22-001584.

“rock, earth, ballast, refuse, garbage or other matter” in the lease area.

On January 10, 1942, (b) (6) agreed to sell to the Richfield Oil Corporation lot 9 and the southerly twenty feet of Lot 10, Supplement Plat of Bay View Gardens, as well as a right of way for the purpose of building and maintaining pipelines over the remaining portion of lot 10 and all of lot 11. This agreement also provided that (b) (6) would secure to Richfield the right to use the harbor area during the term of the (b) (6) lease, and stipulated that

“Richfield shall have the right to enter upon said harbor areas, drive piling, construct a catwalk or pier, a dock and dolphins and to construct and install pipe lines under, over or across the same, all at Richfield’s sold cost and expense, it being understood that the right to grant this privilege to Richfield has been reserved by (b) (6) under the terms and conditions of agreement dated the 22nd day of October, 1941, between (b) (6), Seller, and (b) (6), Buyer....”

This agreement also contemplated

“that the construction of said pier, dock and dolphins will be located, constructed and installed in accordance with the attached Exhibit ‘A’. That said pier and catwalk, the piling and dolphins may extend into the harbor area a sufficient distance to adequately carry on the business of Richfield, but so as not to be inconsistent with either the lease between the State of Washington and (b) (6), or the agreement between (b) (6) and (b) (6), being Exhibits ‘B’ and ‘C’ respectively. It is further contemplated by the parties hereto that the pipe line to be constructed by Richfield shall cross the northerly sixty feet of Lot 10, cross from south to north over Lot 11, and enter the area immediately adjacent to and lying east of the harbor area hereby let; thence westerly over said area to the harbor area hereby let, continuing westerly to a point directly south of the pier and dock to be constructed by Richfield; thence northerly across said pier to the dock.”

This agreement also indemnified (b) (6) and Richfield from “any and all loss, causes of action or damage arising out of their respective operations.”

The Department approved this agreement by the undated signature of Frank Yates, Assistant Commissioner.

The Inspector’s Report for lease application 1362 was made on March 14, 1945 noted that the Richfield Oil Company occupied the harbor area under an agreement with the (b) (6). The Inspector’s Report described the improvements:

“The improvements as described in the Engineer’s report seem to tally with the improvements on the area. As to the value of the improvements will probably have to take the applicants word for it. This catwalk structure which supports the two pipe lines is made with creosote piling and heavy timber and is almost 300’ long with the Tee across the outer end. There is also a floating catwalk under this

pipe running the full length. The under portion of the pipe catwalk is used for power craft mooring or sort of a yacht (yacht) club and is now rung or managed by a (b) (6) who lives in a 20 x 20 house which sets on piling inshore but on the beach. I imagine he leases this probably from (b) (6). The shed mentioned as being on the catwalk is not there at present. These improvements are on the east ½ of this harbor area. The beach here is a moderate to steep slope and probably goes bare about 150' from shore, sand texture but rather badly polluted with oil from the gas plant to the east. There is nothing on the Harbor Area in front of the (b) (6), (b) (6) or balance of the (b) (6) property."

(b) (6) assigned lease 1312 to (b) (6) and (b) (6) on November 18, 1950 and approved by the Commissioner on November 19, 1950.²⁰ On October 10, 1952, (b) (6) assigned his interest in lease 1312 to (b) (6). On May 19, 1954, the (b) (6) applied to release the easterly 450 feet, or 2.0 acres of harbor area measured from the west line of lot 11 of the Supplemental Plat of Bay View Garden Tracts for 10 years for the purpose of "maintaining a small boat moorage, marine railway and other structures for the convenience of navigation and commerce as may be determined by rule of the Commissioner of Public Lands" (22-001584). The character of the improvements in the leased area would be a "small boat moorage operated by Bremerton Marine Service also 2-bedroom house used as office and living quarters, 1-work shop, oil dock as shown by exhibits "a" and "b" accompanying application" all of which were claimed by the applicants except for the oil dock claimed by the Richfield Oil Co.²¹ Figure 22 is a map of harbor area north of Government Lot 7, Section 11, T.24 N. R.1 E., W.M., made on July 27, 1954 by Edwin S. Severance, Professional Engineer and Land Surveyor.²² This map showed the former lease area under application 22-001362, lease 1312. The Commissioner's approval stamp has been cut out from this copy, but faint notations have been placed on the map that indicates that it was intended to be placed in lease jacket 22-001584. The map shows the improvements located within the harbor area the pipeline that crossed existing small boat moorage, the catwalk to access the finger piers of the boat moorage, the Carey's office and living quarters, and the shop owned by the Careys. Figure 23 is Blow up of the eastern portion of the harbor area occupied by the Richfield Oil Corporation as shown in Figure 22.

²⁰ Original assignment document filed in DNR Aquatic Resources Division Lease Jacket 22-001584.

²¹ I have been unable to locate these exhibits. It should be noted that the Carey's identified themselves in a subsequent application to be also known as the Bremerton Marine Service, DNR Aquatic Resources Division File 22-001974.

²² A poor negative copy of that map is in DNR Aquatic Resources Division Lease Jacket 22-001584. I am unable to determine whether this map was adopted as an exhibit for uses under application 22-001584.

Figure 22:

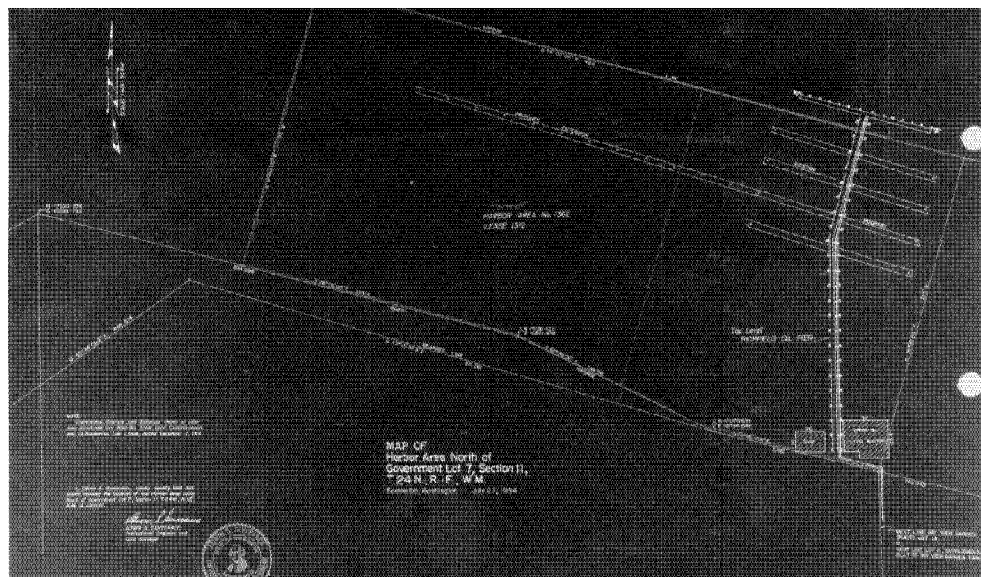
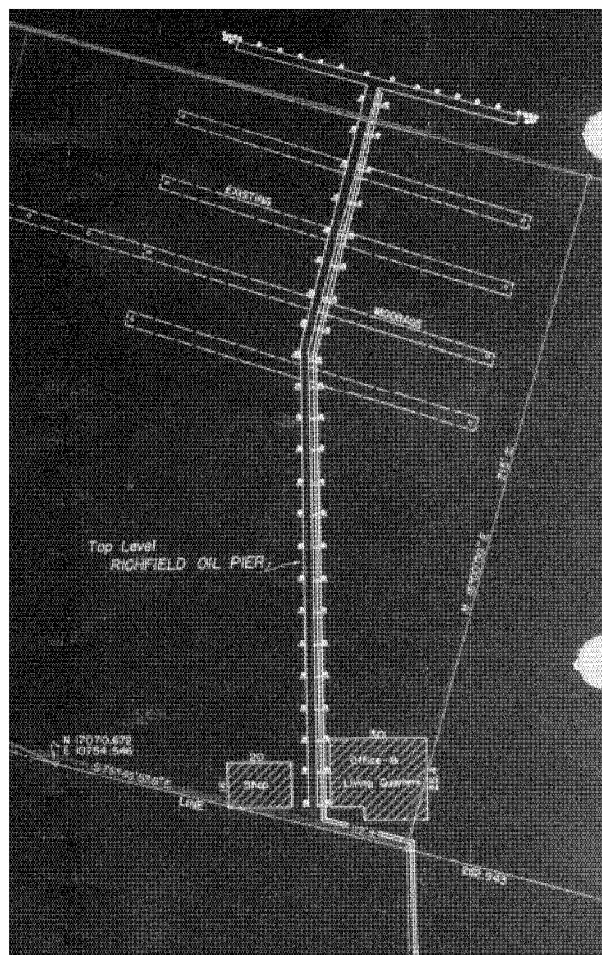


Figure 23:



The Departmental Inspection Report for re-lease application 1584 dated September 29, 1954 described the improvements located in the harbor area to consist of

“a small dwelling and shop building both valued at \$1000.00. An oil dock of creosoted piling and timbers which for a walkway and support for pipeline. Also a small boat moorage located at the outer end of the oil dock. Oil Dock and moorage valued at approx. 12,000.00.

“Applicant is enlarging and remodeling small boat moorage at this time.

“There are no other improvements on desired H.A.

“Recommend lease be granted.

“Oil Dock is owned by Richfield Oil Co. All other improvements claimed by applicant.”

On October 30, 1954, the (b) (6) assigned all their right, title and interest in the easterly 150 feet, or 0.75 acres of leased harbor area as measured on the inner harbor line from the west line of Lot 11, Supplemental Plat of Bay View Garden Tracts to the Richfield Oil Corporation. This assignment was made subject to an agreement and sublease between the Richfield Oil Corporation and the Careys that granted the Careys the right to use the premises “to keep and maintain their work shop, storage shed, office and living quarters, cat walks and floats on said property during the term of this sublease and any extensions hereof.” What this agreement allowed was a joint occupation of the harbor area by Richfield and the Careys over which the pipeline crossed.

On April 28, 1955, the Commissioner of Public Lands found that after lengthy negotiations the (b) (6) and Richfield Oil had agreed that a portion of the harbor area would be directly leased to Richfield, and had ordered the issuance of two leases under the same application number.²³ As with the previous lease 1312 with (b) (6) and then the (b) (6), the harbor area lease 1548 was issued to the (b) (6) for the purpose of “building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce, as may be determined by legislative enactment or by rule of the Commissioner of Public Lands.” As with the previous lease, the (b) (6) agreed not to fill or deposit any “rock, earth, ballast, refuse, garbage or other matter” in the lease area.

The (b) (6), on November 4, 1964, submitted an application to release approximately 1.25 acres of harbor area adjoining the Richfield lease area (22-001974) for a ten year term and claimed ownership of the improvements in the harbor area: “Driven pilings, pontoons and walks constituting a boat moorage for small boats.” The Commissioner executed lease 1974 on June 29, 1965 for a 10 year term commencing on November 1, 1964 for the purpose of “building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce, as may be determined by legislative enactment or by

²³ Note that the (b) (6) lease is outside of the area of interest defined for this report, and will not be described further. It should be noted that once Richfield terminated its use of the harbor area, the Richfield lease area was consolidated into harbor area lease 2332 with the Port Washington Marina Condominium Owner which encompassed all the harbor area fronting lot 7, Section 11, township 24 north, range 1 east between Waterway No. 4 and Renn Stroll.

rule of the Commissioner of Public Lands.” On March 11, 1971, the Commissioner approved the assignment of this lease 1974 to (b)(6). Soon thereafter the (b)(6) requested DNR’s approval to replace an existing tool shed, construct a patio-deck over the beach, and connect the garage to the house. The Department responded on July 6, 1971, that their request was “merely for the purpose of replacing or modifying the structure as shown on the exhibit” DNR had no objection.

Harbor area lease 1974 expired on November 1, 1974.

3.4 Richfield Lease (1553, 1971): As noted above, On October 30, 1954, the (b) (6) assigned all their right, title and interest in the easterly 150 feet, or 0.75 acres, of leased harbor area as measured on the inner harbor line from the west line of Lot 11, Supplemental Plat of Bay View Garden Tracts to the Richfield Oil Corporation subject to an agreement and sublease with the (b) (6) to operate small boat moorage, an office, a shop and a residence within the leased harbor area.

On August 15, 1955, lease 1553 with the Richfield Oil Corporation was executed for a ten year term commencing on November 1, 1954 for 150 feet of harbor area measured from the west line of Lot 11, Supplemental Plat of Bay View Garden Tracts. As with the previous lease 1312 with (b) (6) and the (b) (6), the harbor area lease 1553 was issued to Richfield for the purpose of “building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce, as may be determined by legislative enactment or by rule of the Commissioner of Public Lands.” As with the previous lease, the Richfield Oil Corporation agreed not to fill or deposit any “rock, earth, ballast, refuse, garbage or other matter” in the lease area.

The Richfield Oil Corporation applied for a release of the harbor area on September 10, 1964 for the maximum number of years (22-001971). This application claimed that there were no improvements located in the area. On January 13, 1965, the Chief Engineer reported that the exhibits filed with application 22-001584 were brought forward, and that there were no improvements located in the harbor area. In the April 21, 1965 the department’s inspection declared that

“Inspection was made by John Kingsbury and William Wilburn at 3:30 PM on April 19, 1965. All statements made by the applicants in their report appear to be correct. There have been no changes since 1960 so the exhibits submitted with former application HA application 1584 is applicable to this application. Since this is a proper and continuing business use of the area it is recommended that this release be granted.”

Figure 24 shows the location of the Richfield Oil Corporation Dock to the Bremerton Marine Service Marina ((b) (6) marina) in August 1970.

Figure 24



On October 10, 1974, The Atlantic Richfield Corporation informed DNR “that Atlantic Richfield Company, formerly the Atlantic Refining Company, successor by merger to Richfield Oil Corporation, does not intend to request an extension to this lease or to renegotiate a new lease on this harbor area.” A 1981 aerial photograph filed in DNR Aquatic Resources Division Lease Jacket 22-002523 shows the former Richfield dock area, and at least a portion of the pipeline appears to have been removed (Figure 25). As shown on the photograph, a portion of the pipeline over the exposed beach may still have existed. The photograph also shows that the Atlantic Richfield tank farm remained:

Figure 25



Once the Atlantic Richfield Corporation decided not to apply for a release of the harbor area, it is difficult to discern when the pipeline from the oil tank farm was removed from the uplands in Lot 11, Supplemental Plat of Bay View Garden Tracts, or from the harbor area once leased by Atlantic Richfield. No documents exist in the DNR file jackets that indicate when the pipeline was removed, but a review of the lease jacket 2332 documents indicate when major modifications to the improvements in the harbor area subsequently occurred for the Port Washington Marina.

3.5 The (b)(6) Lease (2332): On October 17, 1974, (b)(6) applied for a release of harbor area leases 1971 and 1974. He claimed to be the owner of the office and moorage floats valued at \$10,000 located in the harbor area (22-002332) and combined the former (b)(6) (b)(6) lease area with the former Richfield lease area in his application. The Commissioner executed lease 2332 for the use of approximately 2.0 acres of harbor area on April 29, 1978 with (b)(6) for a 30 year term commencing on November 1, 1974 for the purposes of building and maintaining wharves, docks and other structures for the convenience of navigation and commerce. The (b)(6) agreed to restrict their use of the harbor area to conform to applicable laws and regulations of any public authority; remove no valuable material; and not fill in the leased area or deposit any rock, earth, ballast, refuse, garbage or other matter except as approved by the State. The (b)(6) also assumed responsibility to maintain the improvements regardless of ownership in as good condition and repair as originally constructed, except for reasonable use. Other significant provisions of the lease included:

- Section 5.2 (2) of the lease provided that the (b)(6)
“shall not allow debris or refuse to accumulate on the leased premises, caused either by himself or any person authorized on the premises by the Lessee. Failure to comply with this provision shall be cause to permit the Lessor to remove the debris and refuse and collect the cost of such removal from the Lessee and/or cancel this lease.”
- Section 5.3 (1) of the lease stipulated that “The premises have been inspected by the Lessee and are accepted in their present condition. Lessee agrees to defend and hold Lessor harmless from any and all claims suffered on the premises, or arising out of operations on the premises.
- Section 6.8 (1) provided that if the (b)(6) failed to perform any requirement or obligation, the State would have the option to correct that obligation after a thirty days’ written notice to be reimbursed by the (b)(6).
- Section 6.8 (2) stipulated that “In the event any violation or breach of the provisions of the lease is causing damage to the leasehold premises or the Lessee is utilizing the leasehold premises in a manner not permitted by the provisions of this lease, or in any case damages are occurring to the leasehold premises, the Lessor may immediately enter upon the leasehold premises and take such action as necessary to cease such damages or use. In the event the damages or use is occurring by reason of a violation or breach of the

provisions of the lease, the Lessee shall be liable for all costs incurred by the Lessor by reasons of such violations. The Lessor, at its option may send notice to the Lessee of such violations and the Lessee shall immediately cease such use or violation and correct and remedy such violations.”

In 1975, the (b) (6) divorced. On January 16 1976, the Kitsap County Superior Court assigned all (b) (6) interest in lease 2332 to (b)(6). On January 28, 1976, the Commissioner approved the involuntary assignment of the lease to (b)(6). A series of assignments for lease 2332 followed:

- On August 4, 1976, the Commissioner approved the assignment of (b) (6) right, title and interest in lease 2332 to Sea Gate, Inc. for \$20,000.00.
- On September 14, 1981, the Commissioner approved the assignment of lease 2332 from Sea Gate to Sea Brim Inc. In a letter from Jack Cyr, Jr., Secretary for Sea Gate, Inc. to DNR dated May 12, 1981, the assignment was to (b)(6) Enterprises, owner of the Sea Brim Condominiums located at the top of the bluff above the marina. According to Jack Cyr, Jr., (b)(6) had indicated that “he would propose to tear the boathouses down to the water level and use the styrofoam floats thereunder for moorage. He also indicates that he would like to rehabilitate the entire marina during the summer.” The July 21, 1981 photograph (Figure4) shows the existence of the boathouses that (b)(6) proposed to tear down
- On September 14, 1981, the Commissioner approved a loan security assignment with Sea Brim to assure that mortgage payments would be made to Sea Gate—for \$103,400.00.
- On May 26, 1983, Sea Brim, Inc. assigned its interest in lease 2332 to Port Washington Properties. DNR approved this assignment on May 31, 1983.
- On June 10, 1983, Port Washington Properties, Inc. entered into a loan security assignment with (b) (6) for \$1,600,000.00. On the same day, Port Washington Properties entered into a loan security lease assignment with University Federal Savings for \$1,600,000.00. DNR approved both loan security assignments on June 13, 1983.
- On June 15, 1983, Sea Gate released Sea Brim from its loan security assignment obligations. DNR approved this release on August 8, 1983.
- On December 14, 1983, DNR approved the Port Washington Property lease assignment to Port Washington Marina Condominium Owners Association. DNR also approved in this document moorage slip subleases. This Consent to Assignment document provided that
 - The lessee and the assignee “shall hold the State of Washington and the Department of Natural Resources” harmless from any claims or damage which might result from the fact of granting of this consent.”

- That the State of Washington and the Department of Natural Resources “has not ownership interest in any of the authorized improvements now or hereafter located upon or above the property subject to the subject Lease, or the adjoining uplands.”

DNR approved a lease amendment with the Port Washington Marina Owners Association on October 2, 1987 to define as the permitted use “moorage floats and moorage for a marina” rather than the more generic purpose statement for building and maintaining wharves, docks and other structures for the convenience of navigation and commerce. It also amended the rent clauses of the lease to accord with the Chapter 221, Laws of 1984—the Aquatic Lands Act.

3.6 Western Gas Company leases (935, 1352) has leased 1.85 acres of harbor area fronting the Bay View Garden Tracts from 1930 to 1959. After 1959, this harbor area was leased by (b) (6) until December 11, 1975 and then by (b) (6) until May 31, 1983. During this period of time the property appears not to have been utilized the harbor area for any purpose. In May 1983, the Port Washington Properties assumed the lease for this harbor area and developed a marina over the western portion of this lease area. In 1993, this portion of the harbor area located west of Renn Stroll was merged with other harbor area located to its west and leased to the Port Washington Marina Condominium Owners Association. The portion of the harbor area that the Western Gas Company dock, pilings and pipelines are not part of lease 2332.

Western Gas Company harbor area leases chronology:

22-000952	Lease 935	Western Gas and Utilities Corp.	1930-1945
22-001386	Lease 1352	Western Gas Co. of Washington	1945-1960
22-001386	Lease Canc.		1959
22-001783	Lease 1783	(b) (6)	1959-1969
22-002141	Lease 2141	(b) (6)	1969-1979
22-002523	Lease 2523	(b) (6) and (b) (6)	1979-1989
22-002523	Assignment	Port Washington Properties	1983-1993
22-002332	Lease 2332	Port Washington Marina Condo Owners	1993
	Assignment	Seven J's Investments	2003
22-A02332	Lease A2332	Seven J's Investments	2004-2034

On September 18, 1930, Walter F. Meier applied to lease for a thirty year term for dock purposes on harbor area fronting (b) (6) Bay View Garden Tracts 11, 12, 13, 14 and 15 and intervening “Penn Stroll” in Lot 7, Sec. 11 and Lot 1, Sec. 14, Township 24 North Range 1 East. On October 3, 1930, Walter F. Meier, of Meier & Meagher attorneys, informed the Commissioner of Public Lands that

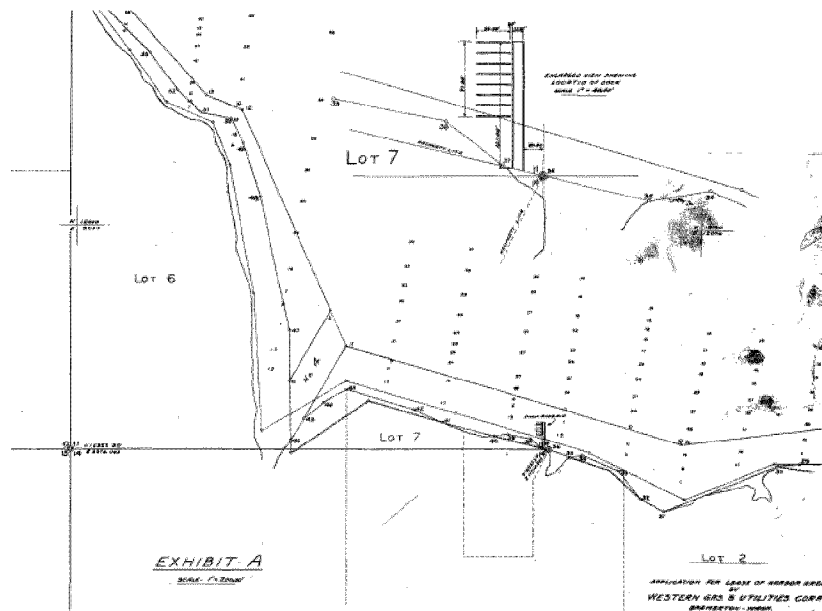
“while the application for lease was made in the name of Walter F. Meier, the lease is being made for the benefit of The Western Gas and Utilities Corporation, which is building a gas plant at Bremerton on property embraced within Bay

View Garden Tracts. Since this is true, would you advise that the application to lease be assigned to the corporation in advance of the making of the lease, or afterwards.”

Meier assigned his harbor area lease application to the Western Gas and Utilities Corporation on October 10, 1930, which was accepted by the Commissioner on October 15th.

Exhibit A to the lease was filed with the Department on October 25, 1930 (Figure 26).²⁴

Figure 26



According to the Engineers Report to the Commissioner on October 30, 1930, these exhibits A and B showed “a dock and grid on the east portion of the harbor area applied for.” On November 6, 1930, the Western Gas Company of Washington informed the Department’s Engineering Department that

“Due to a coal handling problem in the operation of our gas plan at Bremerton, Washington, we find it necessary to change our plans on the waterfront construction from those which already have been submitted. We desire to eliminate the construction of the pier and grid-iron as shown on Exhibit A, and wish to substitute a single row of ten inch pile spaced fifteen feet. This line of pile will extend at right angles to the shore line approximately one hundred and twenty-five feet into the bay, and is so constructed for the purpose of supporting a three inch pipeline for unloading oil.

²⁴ I have yet to find the original Exhibit A. Figure 11 is taken from a Photostat of the Exhibit A filed in DNR Aquatic Resources Division Lease Jacket 22-002523.

“In addition, two dolphins will be driven next to the row of pile for making fast the scows delivering the coal and oil.”

This letter was transmitted to the Department by Walter Meier, Attorney for the Western Gas and utilities Corporation on November 7, 1930. The Commissioner approved this change on November 8, 1930. No new exhibits were filed.²⁵

On November 21, 1930, the Commissioner ordered the issuance of a harbor area lease to the Western Gas and Utilities Corporation. The Department executed Harbor Area Lease 935 with the Western Gas and Utilities Corporation on December 15, 1930 for a term of 15 years commencing on November 25, 1930 for the purpose of “building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce, as determined by legislative enactment or by rule of the Commissioner of Public Lands.” The gas and utilities company agreed not to fill or deposit any “rock, earth, ballast, refuse, garbage or other matter” in the lease area. The Commissioner by Order approved the assignment of lease 935 from the Western Gas and Utilities Company to Western Gas Company of Washington on October 10, 1931.

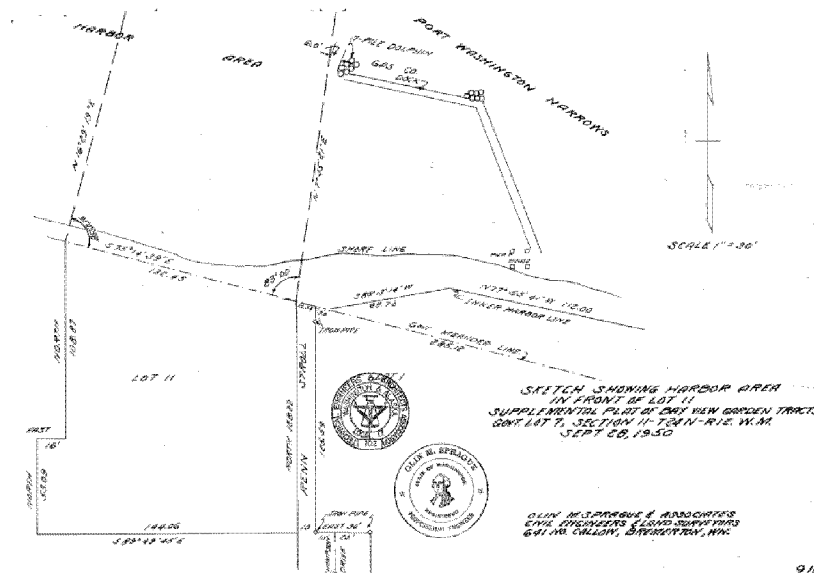
The Western Gas Company of Washington applied to release the harbor area on June 10, 1946 for 10 years “to load & upload at gas co plant.” (22-001386). On August 21, 1946, the departmental inspection report was written for application 1386 which described the leased area:

“This Harbor Area amounts to tidelands which are rather a steep slope and a portion that is in deep water at all times. The improvements are mostly east of Thompson Drive and consist of a few dolphins and framed piling for boats and scows to tie along side of, also a two pile catwalk with the pipe on it. There is no real platform dock. It is possible that these improvements on this market are worth the price stated in the report but it does seem high. The Gas Plant is in operation at this time.”

The Commissioner ordered the granting of the new lease (1352) on October 14, 1946. On October 9, 1950, the Western Gas Company of Washington requested permission from the Commissioner to sub-let to (b) (6) the western portion of its leased harbor area. On October 17, the Commissioner approved the sublease, which was issued on October 18, 1950 to end on November 25, 1960. On October 23, Charles Lund, attorney, requested that the sub-lease to (b) (6) be acknowledged. Attached to the October 23, 1950 letter was a September 28, 1950 sketch of the leased harbor area was attached to filed in lease jacket 22-001386 that shows the existing improvements, and the lines that define the sublease area (Figure 27). On October 27, 1950, the Department formally notified Lund that the sublease agreement had been approved.

²⁵ Figure 12 displays the only Exhibit A ever filed for this harbor area, subsequent lease applications adopted this exhibit A including applications 1386, 1783, 2141 and 2523.

Figure 27



The Bremerton Gas Company notified the Commissioner on November 20, 1953, that it had purchased the Western Gas Company of Washington on October 15, 1952, and that it was merged with the Cascade Natural Gas Corporation on July 1, 1953. On February 10, 1959, the Commissioner ordered the cancellation of harbor area lease 1386 "since the applicant no longer needs this property and wishes this lease to be cancelled."

(b) (6) leases (1783, 2141, 2523) On May 12, 1959, **(b) (6)** applied to lease 1.88 acres of harbor area fronting tracts 1 and 11 and intervening Renn Stroll, Supplemental Plat of Bayview Garden Tracts for a 20 year term for the purpose of a "Bulk Plant Site." (22-001783). According to the application, the State claimed the dock and piling in the harbor area, and that these improvements had no value. The Chief Engineer reported to the Commissioner on July 28, 1959, that though harbor area lease 1352 was cancelled on February 10, 1959, the portion of the harbor area fronting tract 11 was sub-leased to **(b) (6)** until November 25, 1960 (the expiration date of lease 1352), and that **(b) (6)** might still be interested in leasing the harbor area. The Department inspection report was made on September 24, 1959:

"Western Gas Company has discontinued the production of gas on the site, so no longer need the harbor area lease. **(b) (6)** is negotiating to purchase the portion of the gas companies uplands that are immediately adjacent to the meander line and has already purchased the uplands owned by **(b) (6)**."

"We contacted **(b) (6)** (now **(b) (6)** **(b) (6)**) and although she has sold her uplands to **(b) (6)**, and although the Gas Company has cancelled the lease, she feels that her sublease should still run until Nov. 25, 1960....

"All other data in the application was found to be correct, except that **(b) (6)** **(b) (6)** has not yet completed negotiations to purchase the Western Gas Co. property.

“Since the applicant is now the Richfield Oil Co. distributor and desires the lease to enable him to install a new Bulk Plant, we recommend that this lease be granted.”

The Commissioner ordered the issuance of a lease for harbor area fronting Tracts 1 and 11 and intervening Renn Stroll, Supplemental Plat of Bay View Garden Tracts to (b) (6) on December 8, 1959. Lease 1783 was issued to (b) (6) on January 6, 1960 for a ten year term commencing on December 8, 1959 for the purpose of “building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce, as determined by legislative enactment or by rule of the Commissioner of Public Lands.” As with previous leases artificial filling and the deposit of any material on the leased premises was not permitted except as provided by law or written permission of the Commissioner.

(b) (6) applied for a release of this area for the purpose of a “Bulk Plant Site as per HA 1783” on October 17, 1969 (22-002141). Jerry Otto, of DNR’s land management division reported on its inspection of the (b) (6) harbor area on July 31, 1970 to DNR’s Surveys and Marine Land Management Division:

“(b) (6); Lessee in the above describe lease, has been in control of the lease area for about the past 11 years. He acquired the lease when he purchased the uplands adjacent to the subject lease. These lands and the original lease were previously owned and controlled by the Western Gas Co.

The Western Gas Company had built a dock for receiving materials they use in their production work. Since they sold out to (b) (6) there has been no further improvements on the harbor area or the uplands...”

.....

“Since (b) (6) has hung onto this area, possibly for speculation purposes, and has made no improvements on it, I’d like to see the application to re-lease refused.”

As part of its inspection, DNR photographed the site. Figure 28 is a photo of the (b) (6) lease area showing the unused Western Gas Co. dock filed in DNR lease jacket 22-002141. On December 1970, Jerry Otto updated his July 31, 1970 memorandum:

“...(b) (6); applicant, and (b) (6) have been involved in legal action regarding the above subject lease.

“It seems that Renn Stroll, a dead-end public road leading to this harbor lease has been used by access to two separate leases. The road goes partially through (b) (6) lease but ends at its final elevation on the (b) (6) lease. (b) (6) had blocked the access on his lease area by bulldozing. The inner harbor line at this location is on the bank and therefore the road falls on the lease area.

“The Judge ruled that (b) (6) had this right and since (b) (6) had constructed a garage, small home, office and cat walk near or on a portion of the (b) (6) lease and/or uplands, (b) (6) would have to move them.

“All this information is available at the Kitsap County Courthouse filed under Superior Court Judgement #50364.

“As it now stands the best interests of the State can be served by approving the re-lease of (b) (6), in order to obtain continued revenue from this land.”²⁶

Figure 28



On January 7, 1971, the Commissioner approved the issuance of harbor area lease to (b) (6). On March 2, 1971, the Commissioner executed lease 2141 “for the purpose of building and maintaining... wharves, docks and other structures for the convenience of navigation and commerce.” Though the standard provision relating to not filling or depositing of any material in the lease area was included within the lease, an indemnification provision was

²⁶ I am unclear about the factual basis of this decision. First, according to the Figure 13 drawing, the shoreline and the inner harbor line are not coincident, and given correspondence in other lease jackets, the ownership line would be to the inner harbor line or the ordinary high water mark, whichever is further waterward. Second, if bulldozing did occur within the leased harbor area, no Commissioner’s approval for this activity exists in the file. Third, the harbor area fronting the (b) (6) property was occupied by (b) (6) between 1960 and 1970 under a sub-lease with the Western Gas Co. I have found no documents relating to the improvements located on the (b) (6) uplands or sub-let harbor area. Fourth, Renn Stroll is located some 132 ½ feet from the corner of the (b) (6) leased harbor area upon which was located the house, garage and catwalk. It appears that a driveway had been constructed to connect the garage with Renn Stroll. I have found no document approved by the Commissioner showing the driveway. No exhibit was ever filed with the department that shows the house-garage expansion undertaken by (b)(6) in 1971, though DNR did approve the replacement and medication of those exhibits.

not. On January 9, 1976, the Commissioner approved the assignment of lease 2141 from (b) (6) to (b) (6) and (b) (6).

(b) (6) and (b) (6) applied for a release of the harbor area on December 12, 1979 (22-002523). The 1981 aerial photograph of the area filed in DNR Lease Jacket 22-002523 shows that the Western Gas Co. Dock and pilings had been removed; the Western Gas Co. buildings and tanks had been replaced and used as a storage area; and that a driveway connecting Renn Stroll and the (b) (6) house did not exist, or is very difficult to identify in the trees (Figure 29).

On October 22, 1980, the Commissioner executed lease 2523 with (b) (6) and (b) (6) for a ten year term commencing on December 8, 1979 for the purpose of “building and maintaining... wharves, docks and other structures for the convenience of navigation and commerce.” Section 4.8 of the lease required (b) (6) and (b) (6) to conform to applicable laws and regulations of any public authority, to not remove valuable materials from the premises without prior written consent, and to not place fill or deposit any material in the leased premises. They accepted the premises in their present condition under Section 5.3, and agreed to defend and hold the State harmless from any and all claims suffered arising out of their operations on the premises.

Figure 29



DNR wrote (b) (6) on December 21, 1981 that it was contemplating granting Sea Brim, successor to the (b) (6), an easement across the harbor area currently under lease to (b) (6) and (b) (6) ::

“Sea Brim Inc. has informed us of their dilemma to gain access to their marina. As you are aware, the marina is landlocked, and the only way to gain access would be through an easement. They have requested a reasonable solution, one which appears to be agreeable with the department. Access could be gained by Renn Stroll Avenue to the inner harbor line. From that point the state could grant access across the Harbor Area Lease No. 2353 to their leased area. Such access across your leasehold would be required to be located below the inner harbor line and above the line of mean low water. The state could grant an easement for a floating walkway or a pile supported walkway, which could grant an easement for a floating walkway or a pile supported walkway, which would not interfere unduly with the use to which the lessee is putting the premises. (Note Clause 4.7—Access)

“In a letter dated September 8, 1980, your attorney indicated that someday, you contemplate further improving the harbor area and that there are no specific development plans. At present there are no improvements located on your leasehold other than an oil dock. Since we have not received any formal plans for new development, we, therefore, cannot see how granting such an easement would unduly interfere with the use being made of the harbor area.

“Under said Clause 4.7, the third party, Sea Brim Inc., is to pay damages to you, the lease holder, otherwise a waiver is to be signed by the lessee. Waiver forms are enclosed for your convenience.

“Please arrange a meeting between you and Sea Brim, Inc. and negotiate the amount of damages. Then notify us of your agreement and we will proceed with the easement.”

Throughout 1982, Sea Brim and (b) (6) and (b) (6) negotiated whether an easement would be granted across the harbor area for access to the marina.

On June 13, 1983, DNR approved the assignment by (b) (6) and (b) (6) of lease 2523 to Port Washington Properties Inc. On July 15, 1987, lease 2523 was assigned to (b)(6). This lease expired on December 8, 1989.

3.7 Port Washington Marina Lease (2332): The Port Washington Marina lease area is comprised of four former lease areas: lease 2332; lease 2339; lease 2396; and the western portion of lease 2523 consolidated between 1982 and 1993 into a new harbor area lease 22-002332 containing 3.487 acres. As outlined above, this harbor area was historically used in conjunction with the former Tideland Oil and Richfield Oil tank farms as well as the western portion of the former Washington Gas Co. facility. How these lease areas were eventually combined into lease 2332 is the purpose of this section.

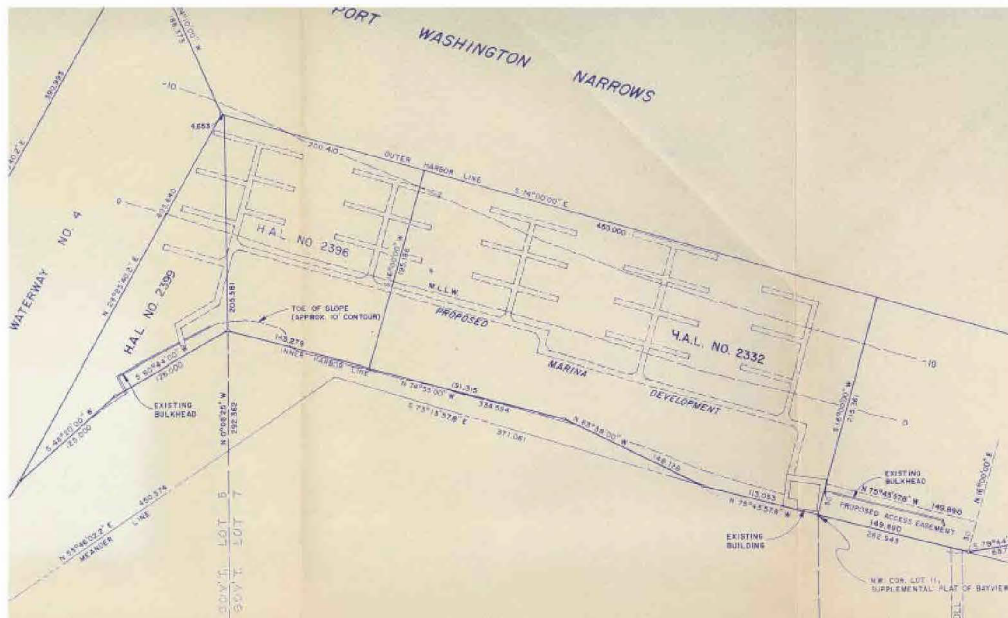
In 1982, the Port Washington Properties applied to the Seattle District Corps of Engineers for a permit to dredge the harbor area under leases 2396 and 2332 and to construct moorage facilities.

Port Washington Marina Harbor Area Lease Chronology:

22-002332	Lease 2332	(b)(6)	1974-2023
	Assignment	Port Washington Properties	1983
	Assignment	Port Washington Marina Condo Owners	1983
	Termination	Harbor Area Leases 2332, 2996, 2999	1993
22-002332	Lease 2332	Port Washington Marina Condo Owners	1993-2023
	Assignment	(b)(6)	1995
	Assignment	Seven J's Investments	2003
22-A02332	Lease A2332	Seven J's Investments	2004-2034

At the same time as Sea Brim and (b) (6) and (b) (6) were negotiating an access agreement under lease 2523, Port Washington Properties was developing plans for a proposed marina in harbor area covered by leases from Waterway No. 4 to the eastern wall of the existing building that included harbor area leases 2399, 2396, and 2332. That plan shows a proposed easement from Renn Stroll to the building, and shows an existing bulkhead at this location (Figure 30).²⁷

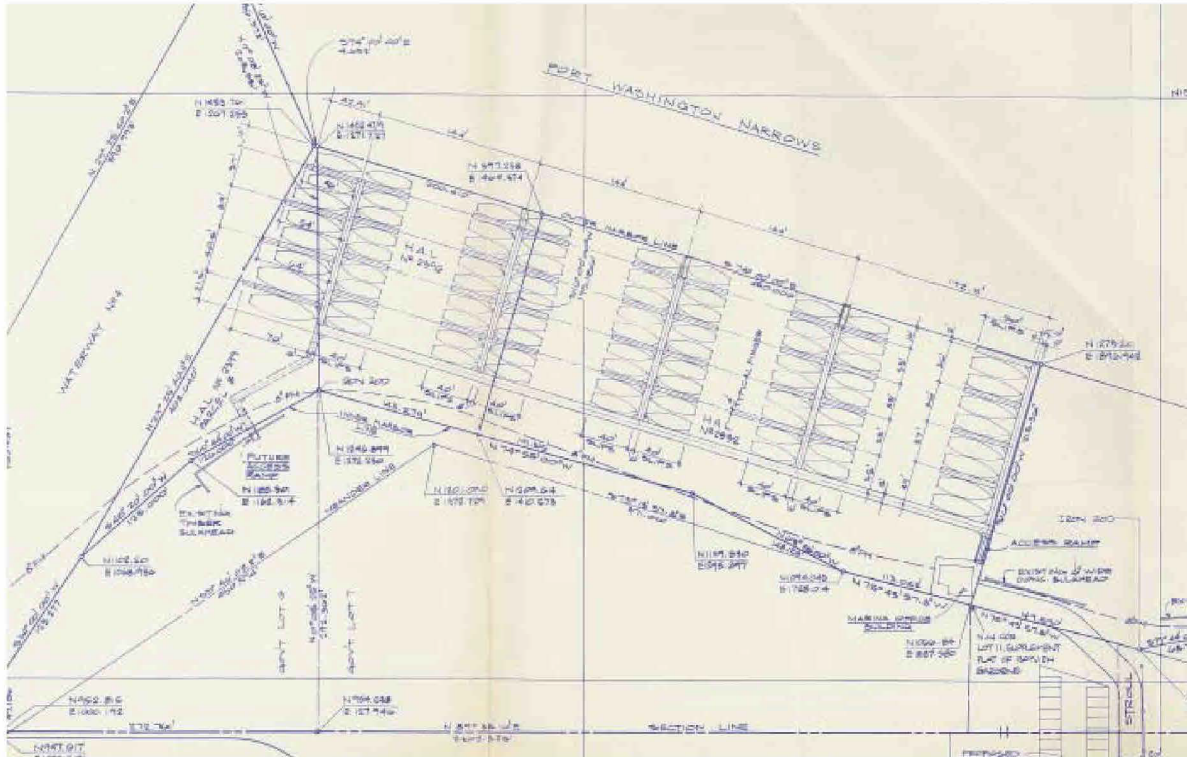
Figure 30



Port Washington Marina Condominium Owners Association Marina: In 1983, the Marina was constructed over the three adjacent lease areas 2332, 2396 and 2399 using a site plan dated October 15, 1982 (Figure 31).

²⁷ Port Washington Marina: August 24, 1982. Proposed Marina Plans. DNR Aquatic Resources Division Harbor Area Lease Files.

Figure 31



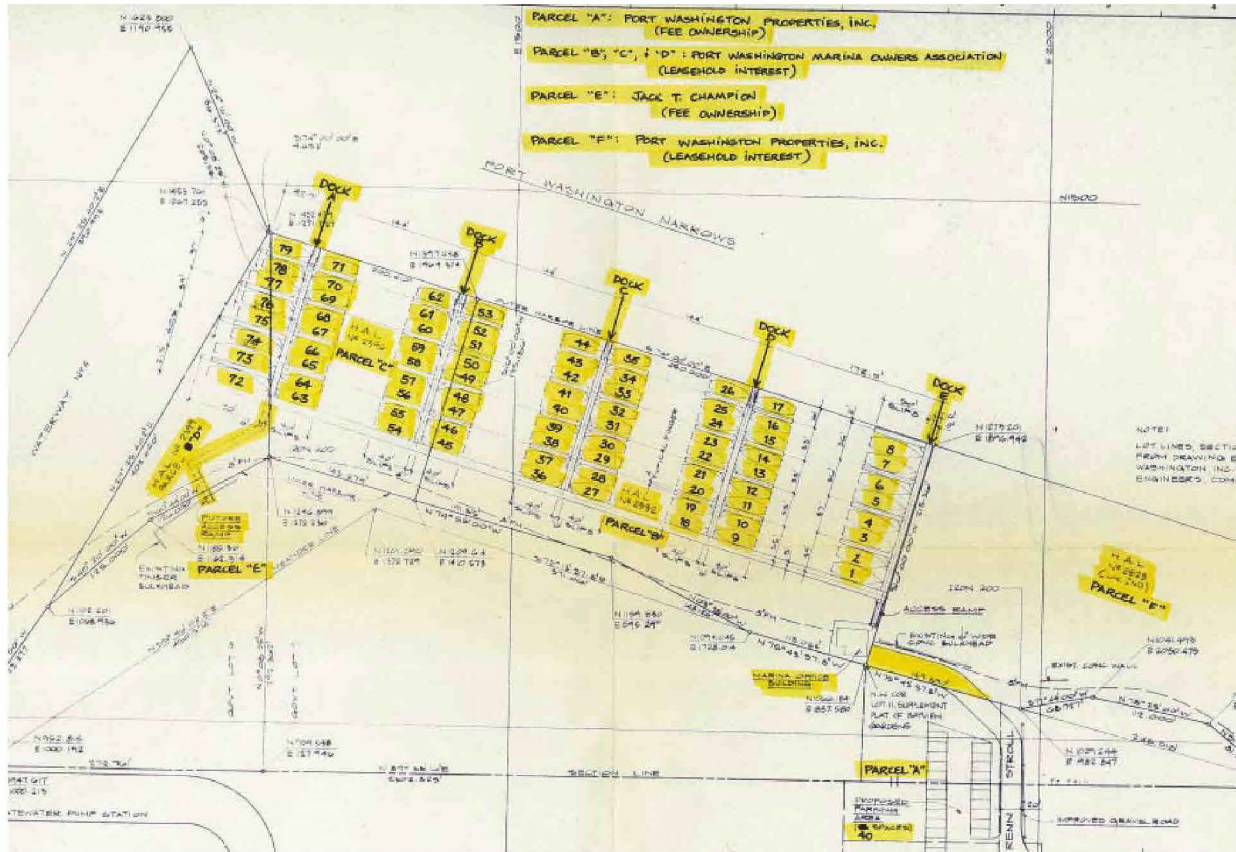
All of these leases were assigned to Port Washington Properties in May 1983. On December 14, 1983, DNR consented to the assignment by Port Washington Properties of its harbor area lease interests to the Port Washington Marina Condominium Owners Association, as well as agreeing to the sub-leasing of marina slips.

From the records in harbor area lease jacket file 22-002332, it appears that the Seattle District of the Corps of Engineers issued a permit for dredging and construction of moorage facilities sometime between 1981 and 1988.²⁸ On July 8, 1983, the Seattle District published a public notice to Port Washington, Inc. for the placement of 1,500 cubic yards of rip rap in order to stabilize previously dredged slopes.

Figure 32 shows the relationship of the property interests of upland ownership and the leased harbor area as of 1983, between Port Washington Properties, Inc., Port Washington Marina Owners Association, (b)(6) and Port Washington Properties.

²⁸ This statement is made based on copies of Seattle District public notices. The DNR Aquatic Resource Division lease jackets do not contain any of the actual permits, but identify the following permits for this marina: OYB-2-007820 (dredge/rip rap); OYB-2-009617 (marina); and in 1988, OYB-2-012234 (dredge/rip rap).

Figure 32



On October 2, 1987, DNR executed an amendment to lease 2332 with the Condominium Owners Association to define that the purpose of the lease to be for “Moorage floats and moorage for a marina.”

On July 12, 1988, the Seattle District issued another Public Notice for the Port Washington Marina Owners Association application to dredge beach material and disposal of them on an upland site and replacement of the excavated material with gravel filter and rip rap (OYB-2-012234 (dredge/rip rap). That notice stated that the purpose of the 1988 application was “to stabilize the beach and previously dredged slope at the Port Washington Marina, reduce the risk of undermining adjacent upland property, and protect a pressurized sewer line buried in the beach for the entire length of the project. That sewer line would be owned and operated by the City of Bremerton (See Section 5 of this report).

DNR executed lease amendments for Harbor Area leases 2332, 2396, and 2399 on July 30, 1993 that amended the 1974 lease term to end on July 31, 1993. On the same day, DNR executed a new lease 2332 with the Port Washington Marina Condominium Owner’s Association for the purposes of “maintaining finger floats, docks, and fixed piles to provide vessel moorage for a

privately-owned and operated marina, and for no other purpose whatsoever.”²⁹ By terminating leases 2332, 2396, and 2399, and with the harbor area previously leased under 2523 open, a new lease could be issued for harbor area extending from Renn Stroll to Waterway No. 4.

Harbor Area Lease 2332 since 1993: On March 15, 1993, the Port Washington Marina Owners Association applied for a new lease that would combine leases 2332, 2396, 2399 into one lease, add some harbor area to the east, and extend the term of the lease to 30 years.³⁰ The new lease would extend from Waterway No. 4 to Renn Stroll, Supplemental Plat of Bay View Garden Tracts, in harbor area previously leased by the Western Gas Co. On May 11, 1993, a new lease exhibit was filed with DNR (Figure 33):

Figure 33



²⁹ DNR Aquatic Resource Division Harbor Area File jacket 22-002332 is divided into 3 folders: File 1 is from 1974-1993; File 2 is from 1993-2003; and the third file, 22-A02332 is from 2003 to the present.

³⁰ (b)(6) Commercial Real Estate: March 17, 1993. Letter to DNR. DNR Aquatic Resources Division File Jacket 22-002332.

DNR executed a new harbor area lease 2332 to the Port Washington Marina Condominium Owners on July 30, 1993 for a thirty year term commencing on August 1, 1993 for the “specified purpose of maintaining finger floats, docks, and fixed piles to provide vessel moorage for a privately-owned marina, and for no other purpose whatsoever.”³¹ The new lease conditioned the Marina Owners Association use of the premises:

- Section 1.2 of the lease provided that “this lease replaces and cancels Lease Nos. 22-002332, 22-002399 and 22-002396.”
- Section 5.4 required that the State have access to the property for purposes of inspecting the property, including environmental tests, audits, surveys or investigations.
- Section 5.6 required the Marina Owners Association “to comply with all applicable laws, regulations, permits, orders or other directives of any public authority” and correct at its own expense any failure of compliance. Section 5.6 also required that the Marina Owners Association not fill in the property, “or deposit any rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, waste matter within or upon the Property, except as approved in writing by State.” Section 5.6 also provided that the Marina Association “not keep, use, dispose, transport, generate, and/or sell any substances designated as hazardous, toxic, dangerous, or harmful” by any federal, state or local law regulation, including RCRA, CERCLA, SARA, and MTCA. These substances were defined as “hazardous substances” for purposes of the lease. The contract also required the marina association to notify the State of all spills and releases; and to conduct all tests, audits, surveys, or investigations requested by the State.
- Section 5.6(d)(4) required the marina association to be “fully and completely liable to the State, and shall waive any claims against State for contribution or otherwise, and shall indemnify, defend and save harmless State and its agencies, employees, officers, directors, and agents in respect to any and all liability, damages...fees...penalties...as a result of Lessee’s control of the Property” and the use, transport, disposal and generation of Hazardous Substances.
- Section 5.8 stipulated that the marina association would have “exclusive control and possession of the property” during the term of the lease subject to easements, and the State would have no liabilities obligations, control or responsibilities with any plans or specifications submitted to the State for approval. This section also provided that the State’s approval or disapproval of any plans or improvements would not make the State liable.
- Section 6.1 identified that 60 wood pilings were located on the property as improvements, and were the property of the marina association.

³¹ This new lease may be found in DNR Aquatic Resources Division Lease Jacket 22-002332.

- Section 7 required the marina association sub-leases include provisions relating to the harbor area lease, including term, conformance with all applicable laws and regulation, removal of all sub-lessee trade fixtures, among others.
- Section 8 again provided that the marina association would indemnify the State for any reason whatsoever arising out of its control of the property, except for any actions arising out of State's sole or concurrent negligence.
- Section 9.3 required the marina association to "leave the Property and all improvements thereon to which State has elected to claim title in the state of repair and cleanliness required to be maintained by Lessee during the term of this Lease."

On November 14, 1995, the Port Washington Marina Condominium Owners Association assigned harbor area lease 2332 to (b)(6).³²

On December 18, 2003, DNR approved the assignment of lease 2332 to Seven J's investments. Seven J's Investment is a limited partnership whose partners, as of September 11, 1993, are (b)(6) as General Partner, Estate of (b)(6) as limited partner, (b)(6) as limited partner, (b)(6) as limited partner, (b)(6) as limited partner, (b)(6) as limited partner and (b)(6) as limited partner.

On February 4, 2005, Seven J's Investments applied for a release for an 80 slip marina. On February 25, 2005, the Commissioner executed harbor area lease 22-A02332 with Seven J's Investment for a thirty year term commencing on November 1, 2004 for the use of "recreational and commercial vessel moorage and a marine pump out facility and for no other purpose."

- Section 2.2 did not allow Seven J's to "cause or permit any damage to natural resources on the Property", to cause or permit any filling activity to occur, and to not "deposit any rock, earth, ballast, refuse garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants or other matter in or on the Property...."
- Section 7 listed the improvements and their ownership: "sixty three (63) pilings, a bulkhead and filled retaining wall, and two buildings" not owned by the State and a "bulkhead and abutting filled parking area" owned by the State.
- Section 8 deals with Environmental Liability and Risk Allocation. In this section, Hazardous Substance is defined as any substance regulated or defined under federal, state or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup. Section 8.5 required Seven J's Investments to fully indemnify, defend and hold State harmless from all claims, remedial costs, cleanup costs, losses, liens, liabilities, penalties... that arise out of the use, storage, generation, disposal of any hazardous substance; from the release of hazardous

³² (b)(6) DBA Port Washington Marina Association.

substances; or a breach of its obligation to use utmost care when handling hazardous substances.

- Section 10 provides for indemnity, financial insurance and insurance. This section requires Seven J's Investment to "indemnify, defend, and hold harmless State, its employees, officers, and agents from any and all liability, damages (including bodily injury, personal injury and damages to land, aquatic life, and other natural resources)... arising out of the use, occupation, or control of the property by Tenant, its subtenants, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act of State...."

3.8 Cascade Natural Gas easement of harbor area and beds for cathodic protection

On November 26, 1974, the Cascade Natural Gas Corporation applied for an easement for harbor area and beds of navigable water extending directly north of Thompson Drive and Renn Stroll in order to construct a salt water cathodic protection groundbed for protection of a portion of its distribution system in Bremerton (51-037928). On June 24, 1975, DNR issued a perpetual easement conditioned that the Cathodic Groundbed would be placed "so as to allow the unobstructed movement of any equipment or material across the surface of the right of way and shall install said Cathodic Groundbed Protection at such depth as to not interfere with the normal and usual use of the land." Cascade Natural Gas was required to mark the location of the groundbed at the beginning and termination points of the right of way.

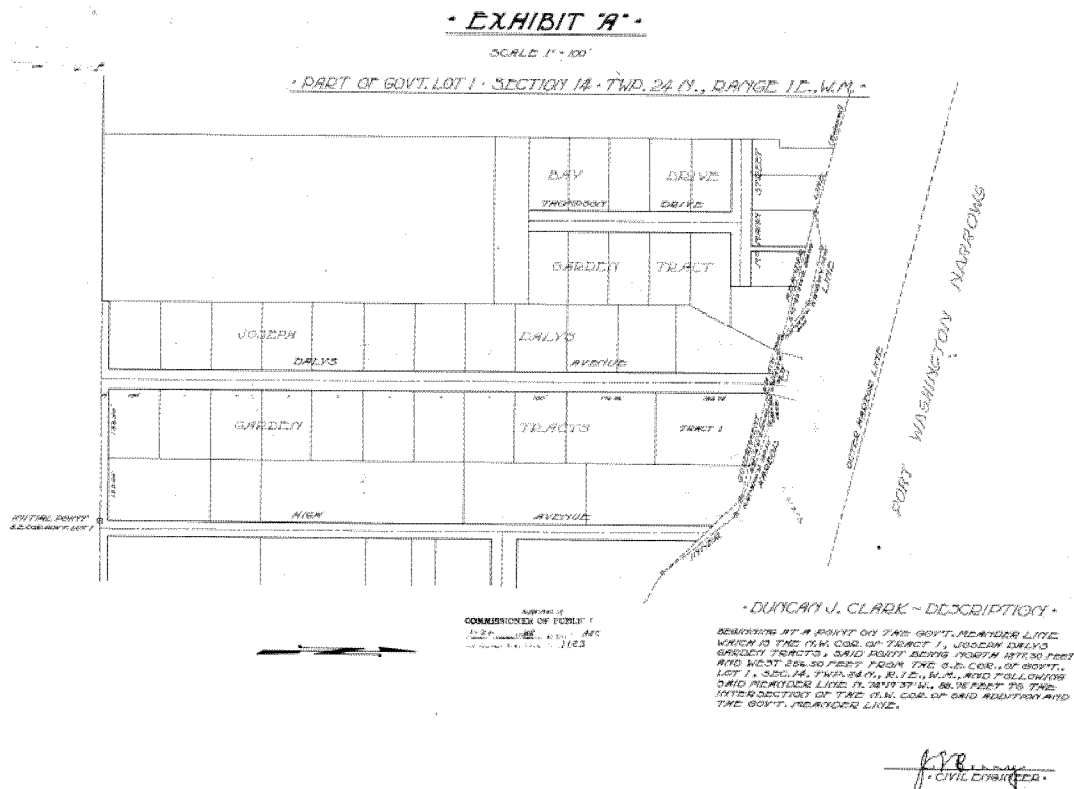
4.0 Lent's has leased 0.3 of Harbor Area fronting Tract 23 and Pennsylvania Avenue of (b) (6) Garden Tracts and located in Lot 1, Section 14, T 24 N R 1 E, WM, and W ½ of Pennsylvania Avenue from 1938-1998 when lease 2716 expired. It is within this harbor area that the 12 inch concrete pipe identified as releasing contaminants into Port Washington Narrows and Dyes Inlet was located.

Harbor Area Lease Chronology:

22-001156	Lease 1123	(b)(6)	1938-1948
22-001432	Lease 1393	(b)(6)	1945-1955
22-001717	Lease 1675	Lent's Inc.	1958-1968
22-002071	Lease 2071	Lent's Inc.	1968-1978
22-002452	Lease 2452	Lent's Inc.	1978-1988
22-002716	Lease 2716	Wilkins Distributing Co. Fuel Barge Loading	1988-1998

On September 27, 1937, (b) (6) made application to lease harbor area fronting tract 1, (b) (6) Garden tracts for the purpose of anchoring boats, floats, etc. (22-001156) On October 6, 1937, (b) (6) wrote the Commissioner attaching an Exhibit "A" (Figure 34).

Figure 34



(b) (6) stated in his October 6th letter that

“I purchased the upland adjoining this harbor area on contract about a year ago. Since purchasing same I have made three trips to Olympia to inquire how to go about leasing this harbor area in front of my property. I have also built the front of my property up during this time and have it in a position now so that I can use the harbor area in front of the property. When I purchased the upland, I had in view the leasing of this harbor area. I had been informed by different parties that the harbor area and tidelands could not be purchased but in some manner could be leased...”

On December 21, 1937, the Chief Engineer reported to the Commissioner on Application 1156 that (b) (6) improvements would consist of an 8 foot by 18 foot mooring float. This report also noted that both (b) (6) and (b) (6) had applied to lease harbor area in front of Pennsylvania Avenue ((b) (6)'s Avenue), and suggested that each be given a lease that would include harbor area in front of ½ of Avenue.

The Departmental Inspector's report dated January 2, 1938 noted that (b) (6) had constructed a sea wall “along here” and remarked

“The sketch shows the meander line to be also the Harbor Area line but at this place the meander line comes up on the upland a short ways I am told. I believe the same reason for this leasing applies to this applicant as it does to (b) (6), that is so (b) (6) could not build in front of the (b) (6) home. At this particular place there is a small cove and of course would make a fair mooring place for small craft. There is a concrete sea wall in front of the (b) (6) place but at present no float anchored to it.

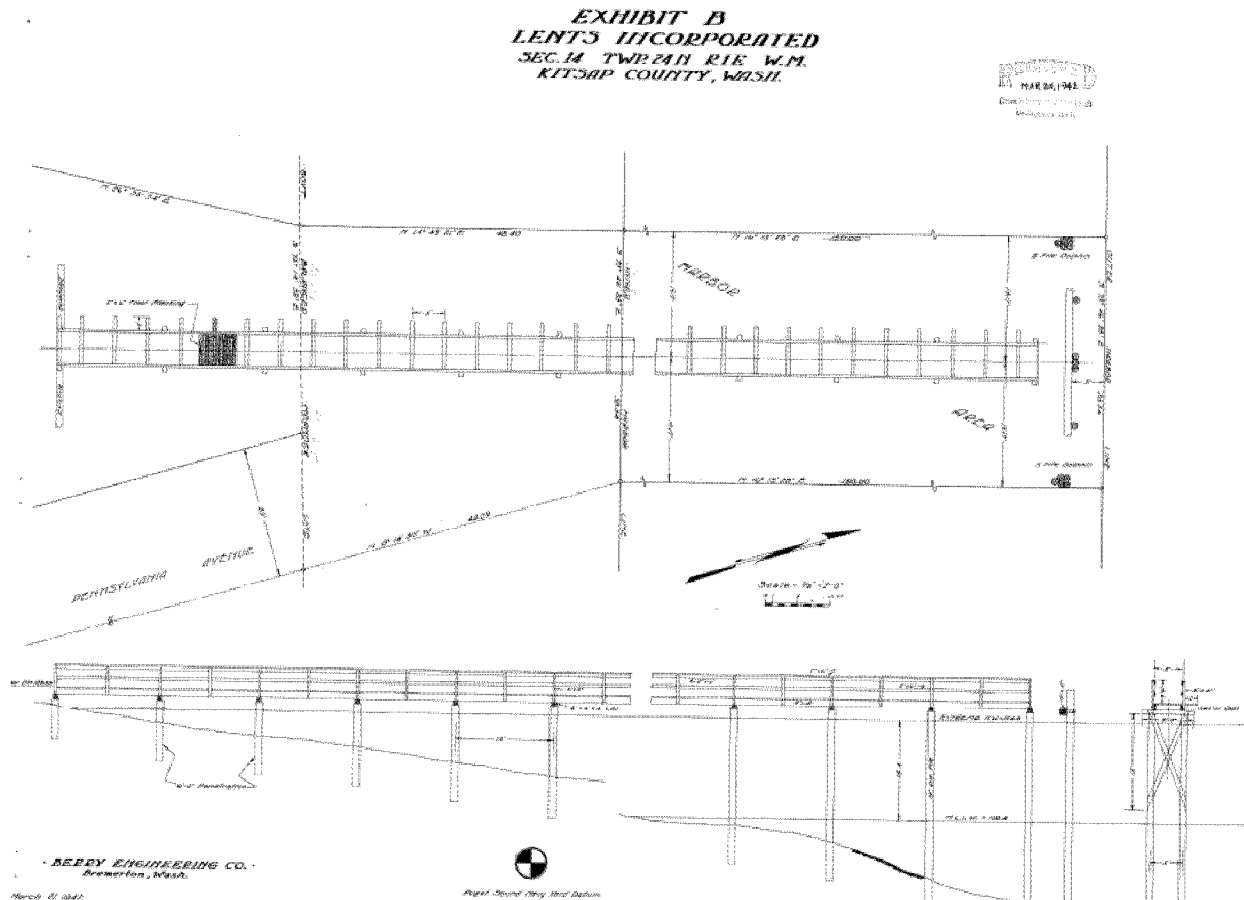
“The City of Bremerton have a survey for both storm and sanitary sewer on Pennsylvania Avenue and Mr. Casad the city engineer tells me that they intend to empty the storm sewer into the bay here but that the sanitary sewer will be taken care of differently.”

On January 21, 1938, the Commissioner ordered the issuance of a lease to (b) (6) for harbor area in front of Tract 23 and the west ½ of Pennsylvania Avenue. On January 25, 1938, the Department executed lease 1123 with (b) (6) for harbor area fronting a portion of lot 1, section 14, township 24 north range 1 east between the west line of Tract 23 and the center line of Pennsylvania Avenue of (b) (6) Garden Tracts for a ten year term for the purpose of building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce....” This lease also prohibited artificial filling or the deposit of any matter within the lease area except as provided by law or by written permission of the commissioner.

The Commissioner approved the assignment of this lease to (b) (6) on January 12, 1942. On March 23, 1942, J. Berry of the Berry Engineering Company and Engineer for the Lent's Company requested a permit from the Department to build a dock into “the Port Washington Narrows from the Southerly shore, extending from the

property at the North end of Pennsylvania Avenue” and noted that the Lents Company owns the property on which this proposed work begins and are the lessors of the harbor area over which the structure will extend to the Outer Harbor Line.” The attached plans became Exhibit B to the lease received by the Department on March 24, 1942 (Figure 35).

Figure 35



On December 26, 1947, Lents Partnership (b) (6) applied for the release fronting tract 23 plat of (b) (6)'s Garden Tracts, and the eastern half of Pennsylvania Avenue for the purpose of "Docking facilities for oil barges and pipe line leading to our diesel and stove oil storage tanks which are situated on the adjacent property" (22-001432). The departmental inspection report dated April 22, 1948 remarked that "The Harbor Area is used at this time having a dock with pipe lines on it, see exhibits." On May 27, 1948, the Commissioner ordered that a lease be granted under application 22-001432. The Commissioner executed lease 1393 on June 2, 1948 for ten year term commencing January 25, 1948. The lease form used was the same as lease 1123, and was issued "for the purpose of building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce...." As with lease 1123, this lease prohibited artificial

filling or the deposit of any matter within the lease area except as provided by law or by written permission of the commissioner. On October 17, 1953, the Commissioner was informed that all of the Lent's Partnership assets had been transferred to Lent's, Inc., a Washington Corporation. On December 21, 1953, the Commissioner approved the completed assignment form.

Lent's Inc. applied for a release of the harbor area on February 17, 1958 for the purpose of "oil barge facilities—dock and pipeline leading to our storage tanks" (22-001717). Lent's Inc. claimed as improvements the "dock and pipeline valued at approximately \$6,000.00." On August 20, 1958, after receiving the Chief Engineer's report and the departmental inspection report that noted no change in harbor area use, the Commissioner ordered the issuance of a lease, and executed lease 1675 on October 10, 1958 for a ten year term commencing on January 25, 1958. The lease form used was the same as leases 1123 and 1393, and was issued "for the purpose of building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce...." As with the prior leases, this lease prohibited artificial filling or the deposit of any matter within the lease area except as provided by law or by written permission of the commissioner.

Lent's Inc. again applied for a release on December 27, 1967 for its oil docking facility. It claimed the dock and the pipeline as improvements it owned. The department inspection report dated June 24, 1968 described the condition of the facilities:

"The improvements on the harbor area consist of a dock approximately 200' long used to unload bulk fuel from barges. The dock is built of fourteen pairs of pressure treated pilings plus several under the landing on the outward end and in dolphins, 12" x 12" caps, two parallel 4" x 12" stringers approximately 6' apart with a deck constructed of 2" x 10" planks approximately 8' long. There is a wooden hand rail the entire length of the dock. The walkway from the uplands to the end of the dock is lighted with incandescent bulbs. There is a lock gate with a "Keep Out" sign across the approach. Along the top of the dock are three pipes approximately 6" in diameter and one 4" in diameter used to transfer the fuel to the bulk tanks on the uplands. The dock is in a good state of repair. There is a 4" x 12" wooden timber bulkhead on either side of the dock for a short distance. This is in poor repair and appears to have failed to prevent erosion of the immediate uplands.

"The stairway running up the 50' bank is in a fair state of repair but it is overgrown by brush and blackberries.

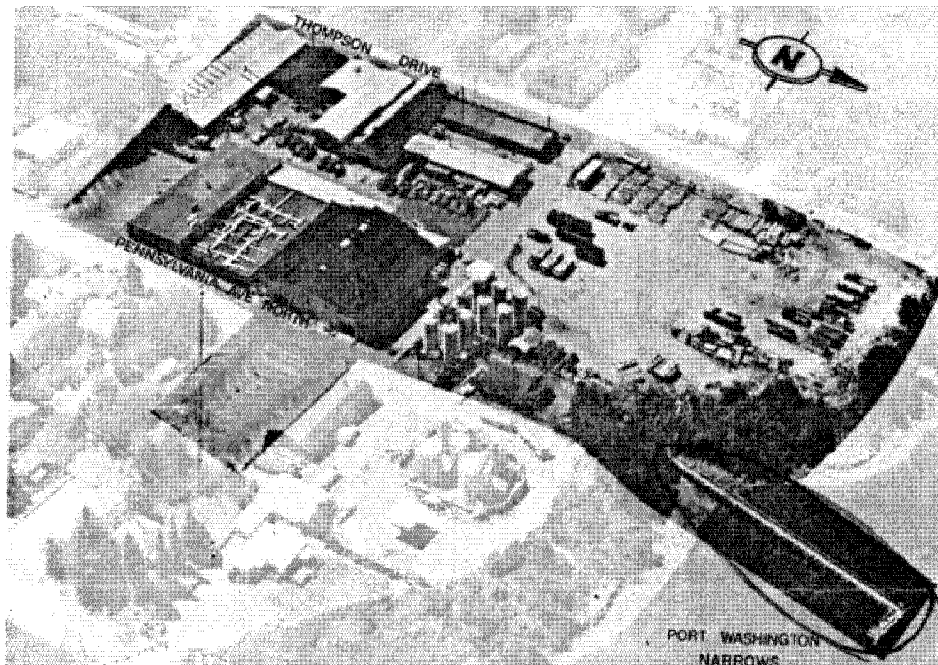
"The pipes from the dock run to ten bulk fuel storage tanks. The immediate uplands and bank above the dock is being used as a dump for construction and plumbing debris. Some of this material has been pushed onto the dock. The upland facilities are being used and an inquiry at the fuel sales office assured me the dock facilities are still being used for bulk delivery by barge."

The Commissioner executed lease 2071 on August 30, 1968 for a ten year term commencing on January 25, 1968. The lease form used was the same as leases 1123, 1393 and 1675, and was issued "for the purpose of building and maintaining upon the above described harbor area,

wharves, docks and other structures for the convenience of navigation and commerce....” As with the prior leases, this lease prohibited artificial filling or the deposit of any matter within the lease area except as provided by law or by written permission of the commissioner.

Lent’s Inc. applied for a release of the harbor area on December 7, 1977 for the use of a Barge Docking Facility and stated that the dock and pipeline, worth \$2,000.00, had not changed since construction (22-002452). The Commissioner executed lease 2452 on February 2, 1978 for a ten year term commencing on January 25, 1978. This lease is unlike the previous leases using a new form. However, like the prior leases, Section 2 provided that it was issued “for the purpose of building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce....” Section 4.8 provided that Lent’s comply with all applicable laws and regulations of any public authority, not remove any valuable material without DNR approval, and not fill in or deposit any material in the leased area. This lease required, however, under Section 5.3, that Lent’s Inc. accept the premises in their present condition, and to defend and hold the State and DNR “harmless from any and all claims suffered, or alleged to be suffered o the premises, or arising out of operations on the premises.” Section 6.8(c) of the lease also stipulated that if damages occur on the leasehold premises, the State may enter onto the premises to take such necessary action to cease such damages or use. If those damages resulted from a violation of the lease terms, Lent’s would be responsible for all costs.³³ Figure 36 is taken from lease jacket 22-002452, and shows the extent of the Lent’s Co. operations.

Figure 36



³³ I have not found any mention in the lease or the lease jacket of the City of Bremerton’s sewage line, or any mention of outfalls that may extend into the harbor area at this point.

The caption that was at the bottom of what has become Figure 36 states that this was the principal plant of Lent's Inc. "Here on the Bremerton, Washington waterfront are located the contracting offices as well as the metal fabricating plant, the tool and supply department, the pipe shop, the oil department, and automotive repair facilities. In addition, the central plan covers more than four city blocks and shop and office buildings covering more than 50,000 square feet."

On December 11, 1979, (b) (6) sold the uplands (a portion of Lot 1, Supplemental Plat of Bayview Garden tracts, and Tract 23 of (b) (6) Garden Tracts) to (b) (6). The conveyance, however, did not include the first class tidelands (harbor area) in front of the property.³⁴ Addendum A to the Real Estate Contract provided that

1. "...the dock facilities, pipelines, valves and all other appurtenant oil handling equipment installed on the property or adjacent or abutting thereto is not included in this sale."
2. "Purchasers are aware that there are existing oil and gasoline supply lines owned by the sellers and that there are also supply lines leased by the sellers to Atlantic Richfield Oil Company which cross the property, being sold, from the existing dock facilities and which is within the easterly 110 feet of the herein described property, the exact location not know at the time of sale."
3. "Sellers reserve unto themselves, their successors, assigns and lessees an easement to allow access to the dock existing on the first class tidelands (sic harbor area) abutting the property described in this contract for the purpose of loading and off-loading operations and also reserve an easement over the easterly 110 feet as measured parallel to the East boundary of the property, described in the contract of sale providing for the operation, maintenance, installation, removal, repair and servicing of those underground oil and gasoline supply lines and this easement shall be five feet in width, two and a half feet on each side of the centerline of said pipelines as existing in the area described."
4. "As a further consideration to the contract of sale, there shall be provision that if any of the oil and gasoline supply lines owned by the sellers or by others and their maintenance provided by lease would be relocated, all expenses of such relocations shall be that of the purchasers."
5. "In the event that any fence is erected by the purchasers along the south boundary of the property described between Pennsylvania and Thompson Streets, it shall provide for a walk-through gate for access to the pipelines, dock and other facilities available to sellers, their successors and assigns and lessees."

³⁴ Real Estate Contract: December 11, 1979. Poor Copy. DNR Aquatic Resources Division Harbor Area file 22-002716.

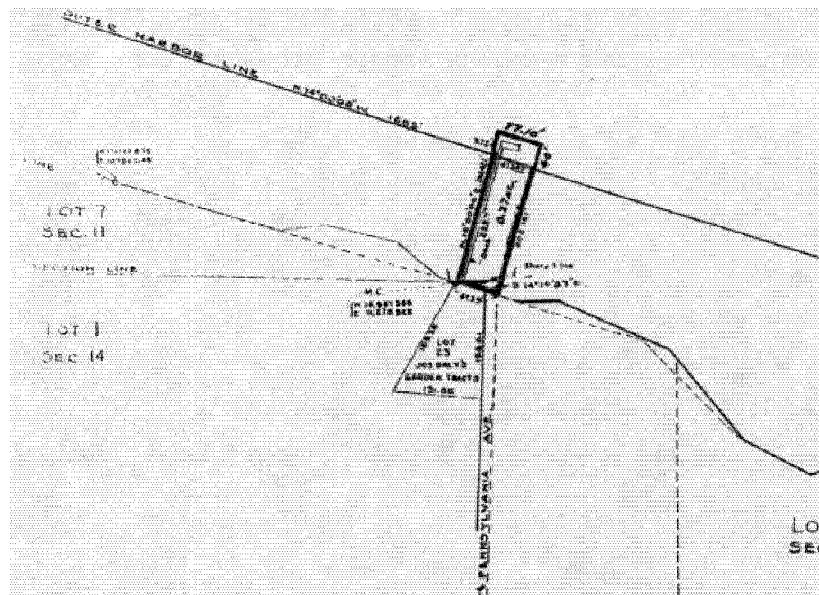
It should be noted that the real estate contract was subject to the following easements:

Easement for sewer pipes	Auditor's file Nos. 301882 and 305863
Easement for sewer	Auditor's file Nos. 308382 and 353788
Easement for sewer	Auditor's file No. 585812
Easement for sewer pipe	Superior Court Cause No. 26012
	Auditor's file no. 588972
Deed and perpetual easement	Auditor's file No. 336749

On November 1, 1980, Lent's Inc., by (b) (6) as owners of "easements for access, operation, maintenance, installation, removal, repair and servicing of a certain oil dock, and underground oil and gasoline supply lines", transferred those easements to Service Fuel Co., Inc. in "conjunction with the transfer of the assets of Lent's Inc oil department. On March 10, 1981, the Commissioner approved the assignment of lease 2452 to the Service Fuel Co., Inc., owned by (b) (6) .

On July 6, 1988, (b) (6), as a result of bankruptcy proceedings, quit claimed all of their interest in the property to the Wilkins Distributing Co., Inc.³⁵ On August 30, 1988, Wilkins Distributing Company applied for a release of the harbor area to be used for commercial fuel barges (22-002716). On March 27, 1989, DNR executed lease 2716 with Wilkins Distributing Co., Inc., for a ten year term for the "purpose of off-loading fuel barges" as shown on the attached exhibit (Figure 37 shows the portion of the attached drawing relating to the leased area). Note that this drawing shows the dock extending waterward of the outer harbor line.

Figure 37



³⁵ (b) (6) .—Trustee: July 1, 1988. Trustees Deed. DNR Aquatic Resources Division Harbor Area file 22-002716.

Lease 2716 provisions restricted the use of the harbor area:

- Section 4.2 required that no improvements be placed upon the harbor area without written approval by DNR, and would be the property of Wilkins Distributing Co.
- Section 4.6 required Wilkins to conform to all applicable laws, regulations, permits or order of any public agency; to not remove any valuable material without prior written consent; and to not make artificial fill or deposit any material including toxic wastes, hydrocarbons or other pollutants, except as approved by DNR.
- Section 5.2 required Wilkins to maintain the improvements on the harbor area regardless of ownership; and not allow debris or refuse to accumulate on the harbor area.
- Section 5.2(3) authorized Wilkins to dredge the lease area to maintain water depths upon 30 days notice to DNR, and required Wilkins to obtain DNR written approval for improvement dredging.
- Section 5.5 stipulated that the premises were accepted by Wilkins in “their present condition.” Wilkins also agreed to defend and hold the State/DNR “harmless from any and all claims suffered, or alleged to be suffered on the premises, or arising out of operations on the premises.”
- Section 6.8 provided means for the State to enter onto the leasehold to cure defaults, either as a result of Wilkins failure at Wilkins expense, or if damages were occurring on the leasehold not caused by Wilkins.

On November 18, 1996, Wilkins Distributing Company requested that Lease 2716 be terminated as soon as possible.³⁶ In the termination letter, GeoScience reported for Wilkins that

“Wilkins leased the tidelands (sic) easement and began operations in 1988. They refurbished an existing wooden dock and used the dock for off-loading fuel oil (heating oil, equivalent to diesel #1) from barges. In 1993, all transfer piping was removed and Wilkins ceased operations on the property. During the lease period, Wilkins did not have any documented or reported releases of fuel at or in the vicinity of the dock. No other petroleum products were handled at the facility.”

On May 8, 1997, DNR informed Wilkins that in order to terminate lease 2716, a Phase 1 Site Assessment be made, which may lead to a Phase 2 site assessment that could require sediment sampling. DNR gave the option to Wilkins to skip the Phase 1 assessment and go to a Phase 2. On May 27, GeoScience Management proposed a work plan to Nordic Properties, Inc. to collect 2 shallow sediment samples located at the end of the dock beyond the outer harbor line.³⁷ No

³⁶ Small, Howard W.—GeoScience Management, Inc.: November 18, 1996. Letter to DNR. DNR Aquatic Resources Division Lease Jacket 22-002716.

³⁷ Sometime in this period, Wilkins Distributing Company changed its name to Nordic Properties, Inc.

sample results, if any, have been filed in DNR Aquatic Resources Division Lease Jacket 22-002716.

This lease expired in 1998. This harbor area is currently not under lease.

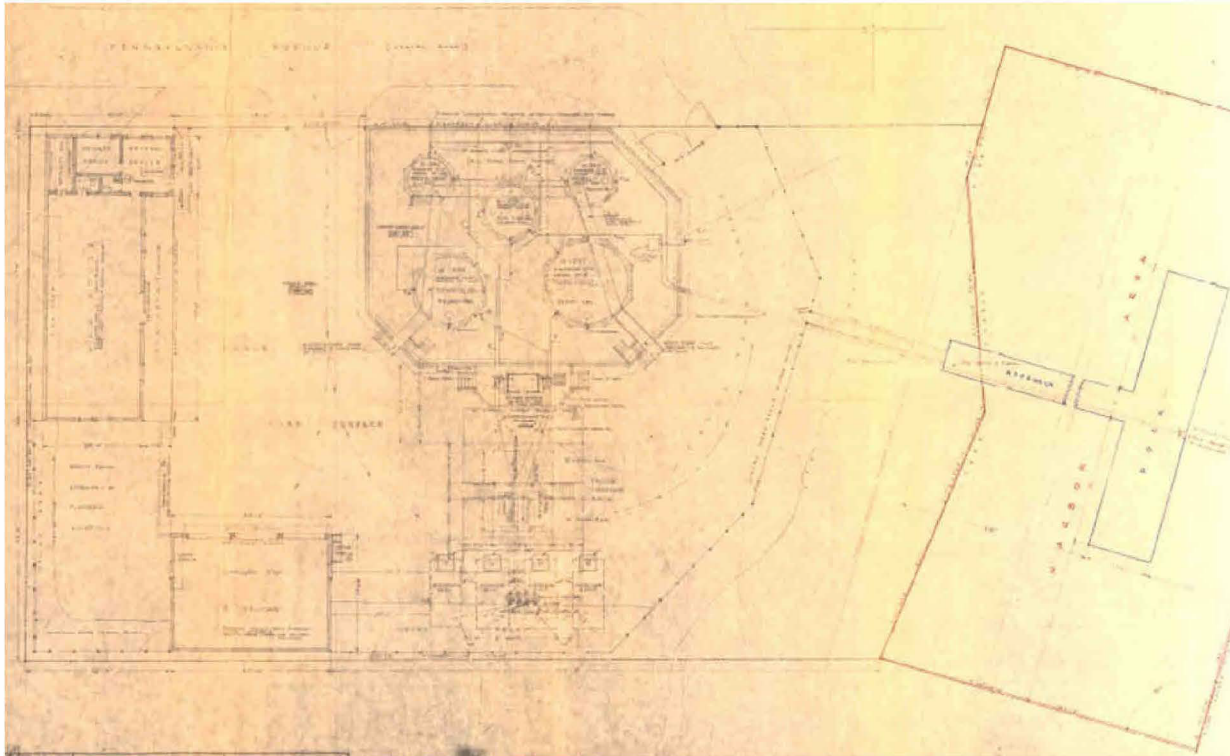
4.0 General Petroleum and its successors leased 0.69 acres of Harbor Area fronting Tract 1 and E ½ of Pennsylvania Avenue, (b) (6)'s Garden Tracts in Lot 1, Section 14, Township 24 North, Range 1 East from 1942 to 1972. This leased harbor area was located immediately adjacent to the Lent's harbor area use described in Section 3.0 of this report.

Harbor Area Lease Chronology

22-001153	Lease 1124	(b)(6)	1938-1948
	Assignment	General Petroleum Co. of Cal.	1942
22-001309	Lease 1280	General Petroleum Co. of Cal.	1943-1953
22-001555	Lease 1507	General Petroleum Co. of Cal.	1953-1963
	Name Change	Socony Mobil Oil Company, Inc.	1960
22-001920	Lease 1920	Socony Mobil Oil Company, Inc.	1963-1973
	Lease Canc.		1972

The harbor was used by General Petroleum and Socony Mobil Oil for a thirty year period for handling petroleum products. A 4" pipeline for stove and diesel fuel, and a 4" pipeline for gasoline were placed on the dock to off-load product from barges to a tank farm located at the top of the bluff (Figure 38).³⁸

Figure 38



³⁸ Plans dated February 15, 1944 filed in DNR Aquatic Resources Division Lease Jacket 22-001555.

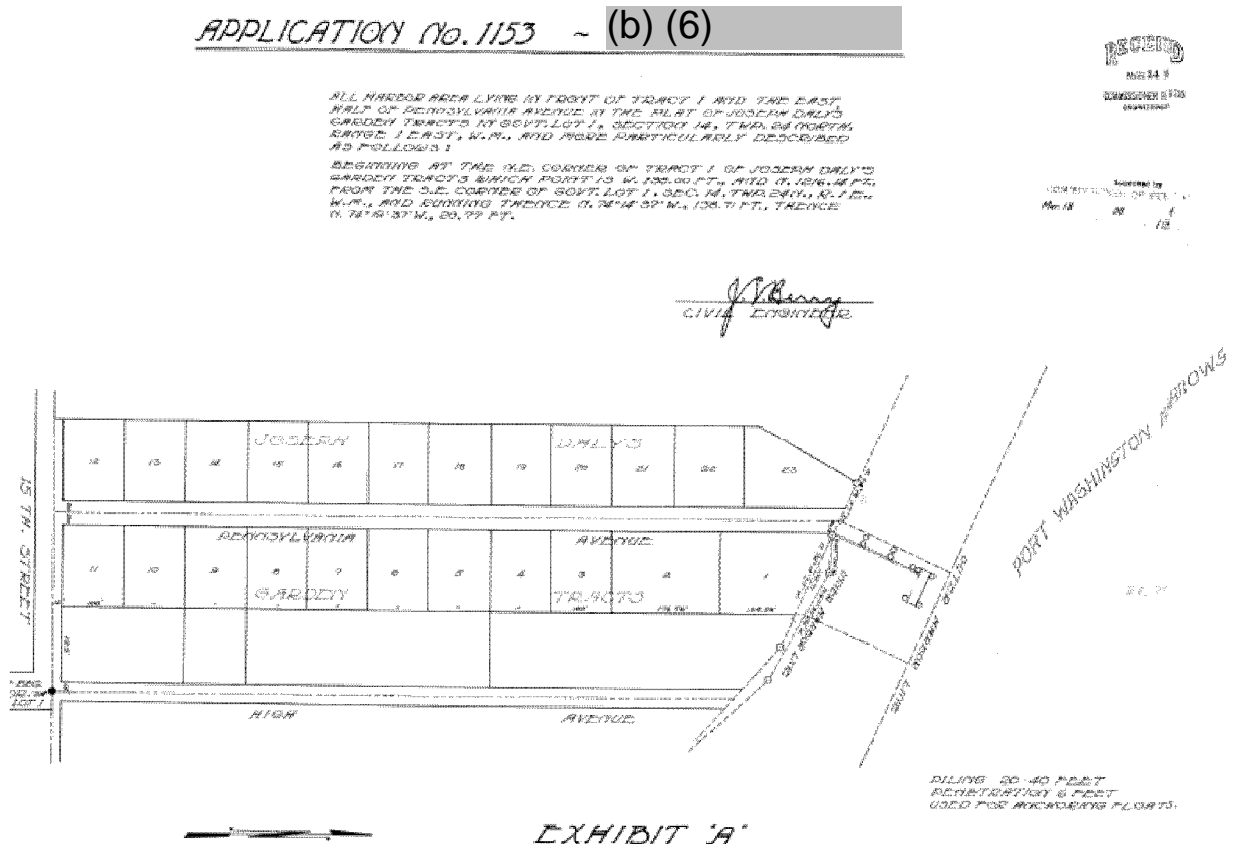
Leasing History: On September 3, 1937, (b) (6) applied to lease this harbor area for the purpose of mooring small boats and anchorage. An Inspectors Report for 22-001153 was written on January 2, 1938 in which it was remarked

“The uplands here slope gentle to the edge of a 30’ bluff which is susceptible of slides. There is no sea wall along the beach and no improvements on the Harbor Area. This is a rather poor place for moorage as it is a sort of a point sticking out, leaving it exposed to winds and currents.

“The city of Bremerton have a storm and sanitary sewer survey down both Pennsylvania Ave., and High Street, the storm sewer I am told will dump directly in the bay at the end of these streets, but the sanitary sewer will follow on around the bluff between High and Pennsylvania Ave., and be taken care of in a sanitary way.”

On March 14, 1938, he filed an exhibit showing the harbor area and proposed improvements (Figure 39).

Figure 39



The Commissioner ordered the issuance of lease on March 18, 1938. The Commissioner executed Lease 1124 with (b) (6) on March 30, 1938 with a ten year term commencing on March 18, 1938, and was issued “for the purpose of building and maintaining upon the above

described harbor area, wharves, docks and other structures for the convenience of navigation and commerce....” This lease prohibited artificial filling or the deposit of any matter within the lease area except as provided by law or by written permission of the commissioner.

On October 14, 1942, the General Petroleum Corporation of California applied to lease the harbor area fronting Tract 1 of (b) (6) Garden Tracts for the purpose of constructing a “dock for handling petroleum products.” In order to construct that dock, General Petroleum proposed to remove the “boat house and catwalk to boat house” (22-001309). On December 16, 1942, the Commissioner approved assignment of lease 1124 to the General Petroleum Corporation of California. By Commissioners Order dated May 5, 1943, lease 1153 was cancelled at the request of General Petroleum and a new lease was ordered under application 22-001309. On December 9, 1943 the Commissioner executed lease 1280 with General Petroleum for a ten year lease commencing on March 18, 1943 “for the purpose of building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce....” This lease prohibited artificial filling or the deposit of any matter within the lease area except as provided by law or by written permission of the commissioner.

The General Petroleum Corporation applied for a release of the harbor area on February 27, 1953 for the “loading and unloading of petroleum products over applicants dock and approach” (22-001555). General Petroleum claimed improvements in the harbor area consisting of “one 72’ x 18’ dock with 8’ x 144’ approach with two 4” pipelines and connections for loading and unloading petroleum products.” It filed Figure 32 as an exhibit for the lease application. Attached to the March 26, 1953 Chief Engineers report for application 22-001555 was this photograph (Figure 40)

Figure 40



On May 19, 1953, the Commissioner ordered the issuance of a harbor area lease to the General Petroleum Corporation. The Commissioner executed lease 1507 with the General Petroleum Corporation on August 18, 1953. As with the previous leases, this lease was issued “for the purpose of building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce...” This lease prohibited artificial filling or the deposit of any matter within the lease area except as provided by law or by written permission of the commissioner. On January 14, 1960, the General Petroleum Corporation was merged into its parent company Socony Mobil Oil Company, Inc.

On January 11, 1963, Socony Mobil Oil Company, Inc applied for a release of lease 1507 (22-001920). On May 13, 1963 the DNR inspector remarked in his Inspector’s Report that

“A pier approximately 100 feet long extends out from the uplands into the harbor area. At low tide there is about 20 feet of water at the end of the dock. The dock appears to be in good condition. It supports two pipe lines that connect with the storage tanks on the adjacent uplands. The dealership is active, and the dock shows signs of recent use.”

On July 15, 1963 the Commissioner order the issuance of a lease to Socony Mobil for a ten year term commencing on March 18, 1963. As with the previous leases, this lease was issued “for the purpose of building and maintaining upon the above described harbor area, wharves, docks and other structures for the convenience of navigation and commerce...” This lease prohibited artificial filling or the deposit of any matter within the lease area except as provided by law or by written permission of the commissioner.

On March 13, 1973 the Mobil Oil Corporation wrote DNR to terminate lease 1920:

“Said lease was entered into for the purpose of loading and unloading petroleum products over our dock and approach. The improvements consist of one 72’ x 18’ dock w/8’ x 144’ approach w/two 4” pipelines and connecting for loading and unloading petroleum products.

On January 1, 1967, Mobil discontinued barge deliveries of petroleum products at Bremerton and shortly thereafter dismantled the dock facilities.”

5.0 City of Bremerton Sewer and Outfalls Records filed in harbor area lease jackets discussed earlier in this report evidence that the City of Bremerton has constructed and maintained both storm water outfalls that discharge into the Port Washington Narrows at Pennsylvania Avenue and a sewer line that transits in and out of waterway and harbor area fronting both Sections 11 and 14 of Township 24 North Range 1 East. Evidence of the City outfall is the 1938 inspection reports for lease application 22-001156 dated January 2, 1938 noted that (b) (6) had constructed a sea wall “along here” and remarked

“The City of Bremerton have a survey for both storm and sanitary sewer on Pennsylvania Avenue and Mr. Casad the city engineer tells me that they intend to empty the storm sewer into the bay here but that the sanitary sewer will be taken care of differently.”

The 1938 department inspection report for (b) (6) application 22-001153 remarked

“The city of Bremerton have a storm and sanitary sewer survey down both Pennsylvania Ave., and High Street, the storm sewer I am told will dump directly in the bay at the end of these streets, but the sanitary sewer will follow on around the bluff between High and Pennsylvania Ave., and be taken care of in a sanitary way.”

On December 11, 1979, when (b) (5), (b) (6) sold the uplands (a portion of Lot 1, Supplemental Plat of Bayview Garden tracts, and Tract 23 of (b) (6) Garden Tracts) to (b) (6), the real estate contract was subject to the following easements:

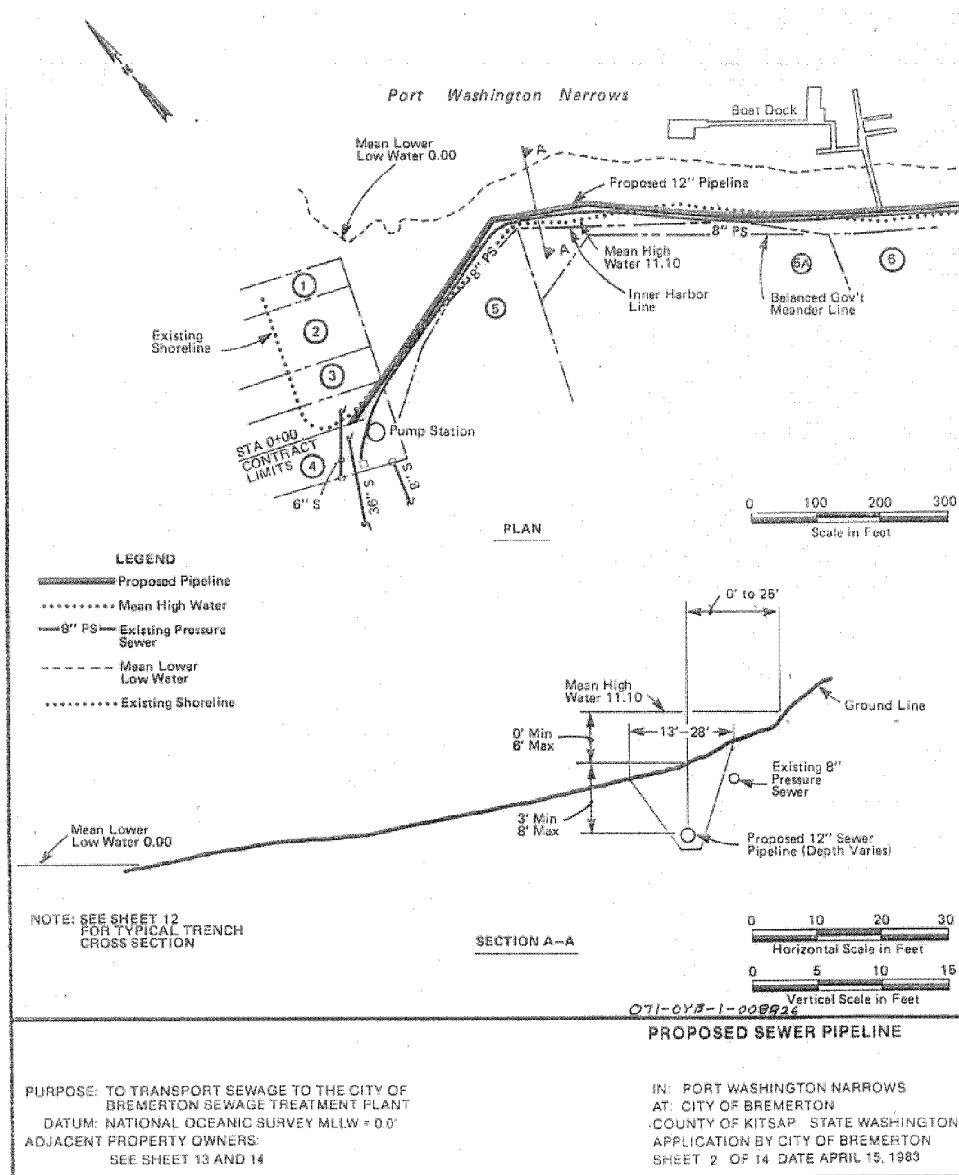
Easement for sewer pipes	Auditor's file Nos. 301882 and 305863
Easement for sewer	Auditor's file Nos. 308382 and 353788
Easement for sewer	Auditor's file No. 585812
Easement for sewer pipe	Superior Court Cause No. 26012
	Auditor's file no. 588972
Deed and perpetual easement	Auditor's file No. 336749

I have not reviewed any of these auditor files for evidence relating to the outfalls. Besides these remarks and notations, I have been unable to find any record relating to a City storm water outfall discharging into the Narrows at Pennsylvania Avenue. However, two harbor lease jackets (22-002604, 22-002655 and 51-046322) relate to outfalls discharging at High Street. Neither jackets relate to activity within the area of interest.

Two DNR Aquatic Resource Division jackets relate to the sewer line that transits the harbor area within the harbor area of interest 51-036177 and 51-045730. In 1972, the City of Bremerton applied for an easement for a 6 inch pressurized sewer line to connect a pumping station in Anderson Cove on uplands abutting Bremerton Waterway No. 4 west and south along the narrows to the Bremerton shipyard (51-036177). It seems that the purpose of the sewer was to collect sewage from beach properties and transport it to a sewage treatment plant. Figure 41 shows the location of the sewer line within the area of interest. In its cover letter to this

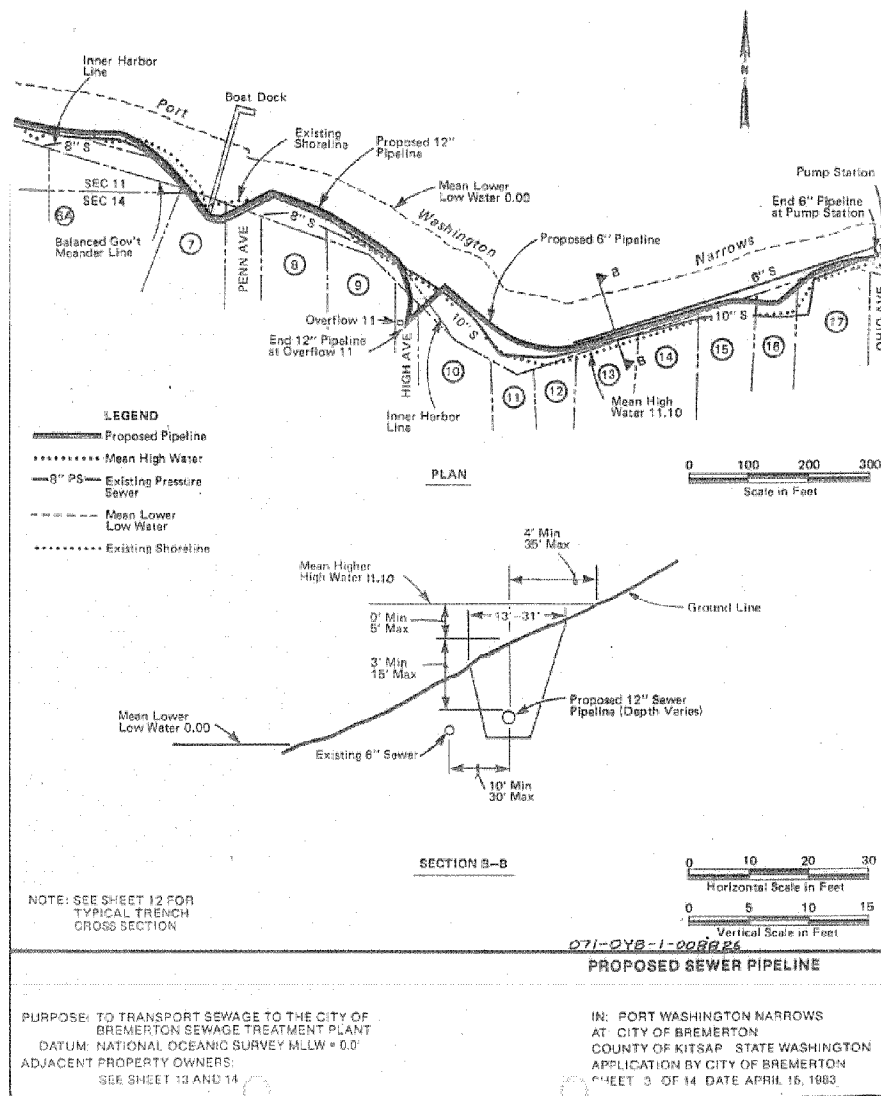
construction of that sewer.³⁹ According to the application, the owners of the existing improvements that would be affected by this project would be Port Washington Properties and Lents' Inc. Attached to this application was the May 13, 1983 Corps of Engineers Public Notice 071-OYB-1-008826. Figures 42 and 43 are sheets 2 and 3 of this application respectively.

Figure 42



³⁹ It should be noted that this application is for a right of way for state owned aquatic lands over an extensive portion of Port Washington Narrows, including rights of way for overflow lines, including one located at High Street. This file contains Corps of Engineers and Shoreline Permit documents that relate to the entire project, not just to that in the area of interest.

Figure 43



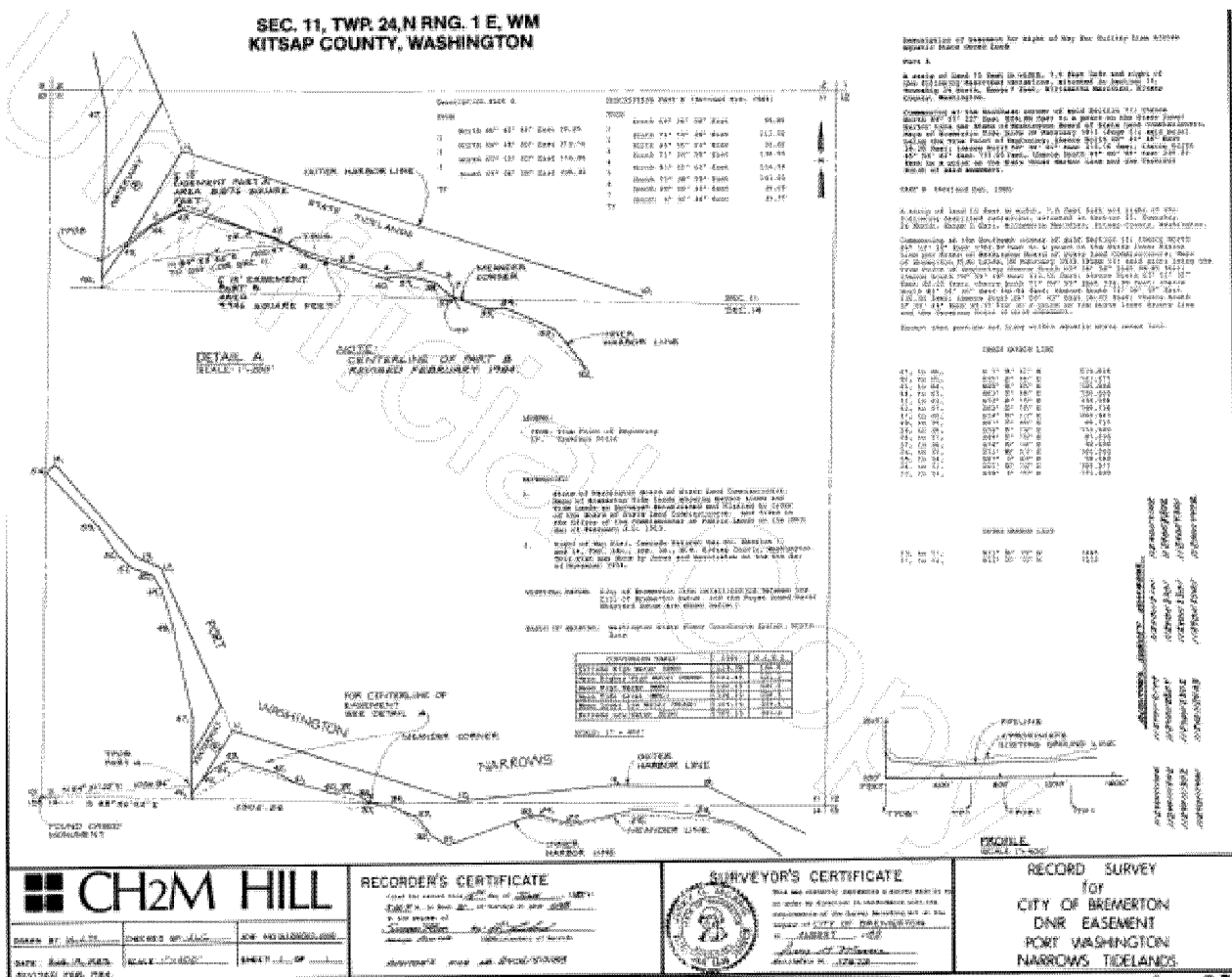
These figures identify the upland owners adjacent to the sewer line. Within the area of interest, those upland owners were: (5) (b)(6) (5A) (b)(6) (6) (b)(6) (b)(6) (7) (b)(6) and (8) (b)(6). These figures also diagram the ditch cut for the sewer line and show the locations of an existing and proposed 6 inch sewer (east of High Street) and an 8 inch sewer (west of High Street) in relation to the proposed 12 inch sewer. The Department of the Army Permit dated October 3, 1983 to the City of Bremerton attaching figures 36 and 37 as part of the permit.

On October 28, 1983, the Department issued an easement for the construction, operation, use and maintenance of a sanitary sewer line over harbor area within the area of interest. A survey of this easement was recorded with the Kitsap County auditor on June 15, 1984 (Figure 44).⁴⁰ The

⁴⁰ Figure 38 was obtained from the Kitsap County Auditor/GIS from Plats Book 21 page 38. Copies of this survey and others may be found in DNR Aquatic Resources Division File 51-045730.

term of this easement was "for the period this easement is used for the purposes specified herein." This easement also reserved to the State and assigns "the right to develop, improve and utilize the land and natural resources thereon...insofar as such reservations are compatible with the Grantee's operation and insofar as such action will not interfere with the rights of the Grantee." The City agreed that its operations would be conducted in a way to minimize damage to tidelands and bed of Port Washington Narrows; would exercise "every necessary means" to prevent contamination or pollution of water as a result of sewer line operation; and to prevent fuel, oil, grease or other deleterious substance from entering the water. The City accepted the premises in their existing condition, and promised to defend and hold harmless the State, its employees, and agents from any and all claims; and to comply with all regulatory requirements of all applicable authorities. The City also agreed to mark the location of the sanitary sewer line with painted metal posts and signs.

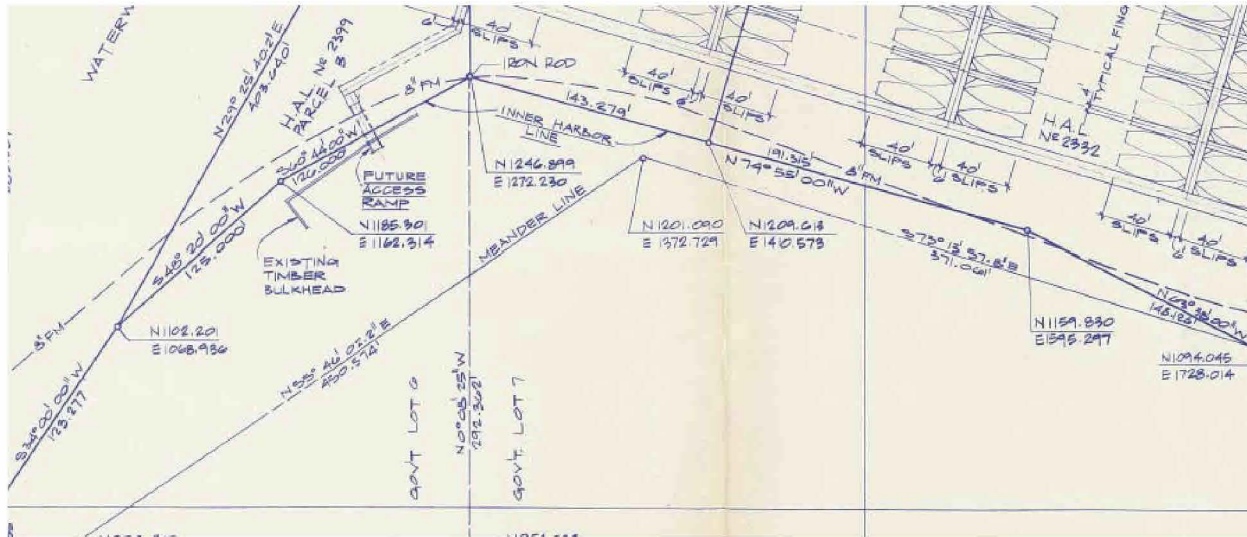
Figure 44



Port Washington Marina and Bremerton Sewer: As noted in Section 3.7 of this report, Port Washington Properties proposed to construct a marina within the area of interest as early as 1982. Site plans for this marina, dated October 1983, are filed in DNR Aquatic Resource

Division lease jacket 2523.⁴¹ Figure 45 displays a portion of this plan, and shows the location of the existing 8 inch sewer to the marina slips. The Corps of Engineers revised public notice 071-OYB-2-007820, dated July 25, 1983, for dredging and placement of rip rap in association with the construction of the marina.⁴² Figure 46 was attached to this public notice.

Figure 45
1983 Port Washington Properties Marina Plan 22-002523



On December 20, 1984, Port Washington Properties filed a complaint in Kitsap County Superior Court to be compensation from Fireman's Fund Insurance Company for damages resulting from the dredging conducted in 1983. In 1984, the City of Bremerton has claimed in the past that dredging outlined in Figure 40 has caused the beach area to be unstable and that the steep slopes resulting from the dredging resulted in threatening the disruption of its sewer line.⁴³ It should be noted that the Department consented to the placement of the improvements on December 14, 1983 when it executed the "Consent to Assignment and Approval of General Sublease Forms," after it had entered into the easement with the City of Bremerton on October 28, 1983. That consent stipulated

"That Lessee and Assignee shall hold the State of Washington and the Department of Natural Resources harmless from any claims or damage which might result from the fact of granting of this consent."

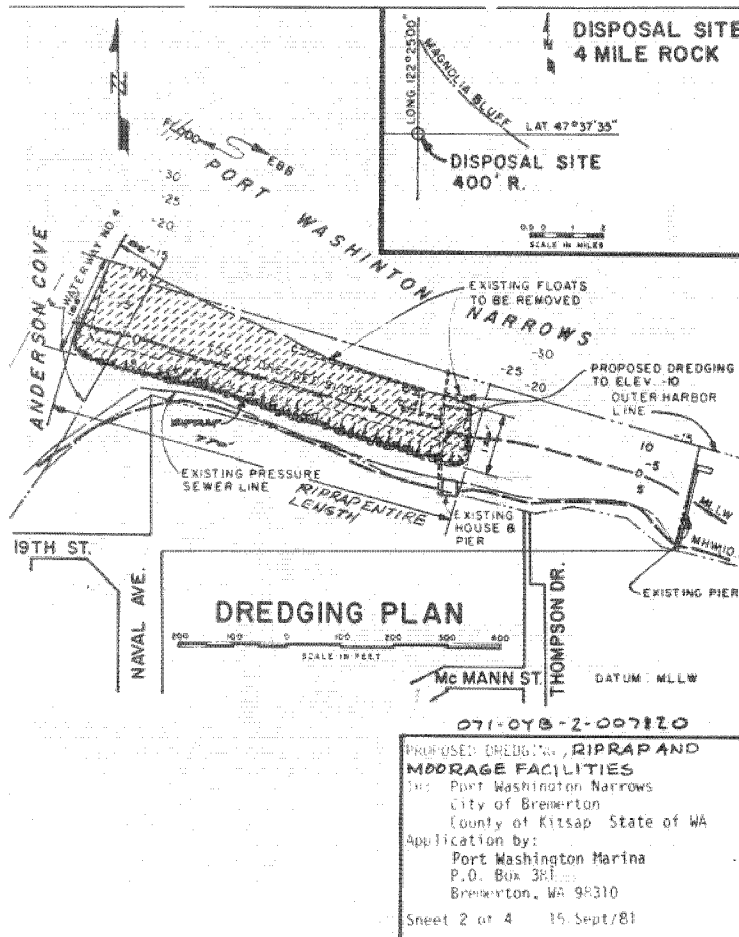
⁴¹ It should be noted that the marina, in 1982, did not include the harbor area covered under 22-002523. Lease 2523 was assigned to Port Washington Properties in 1983, however.

⁴² This public notices is filed in DNR Aquatic Resources Division Lease Jacket 22-002332. I have yet to locate the actual Corps of Engineers Permit for these actions.

⁴³ Foulds, Felker, Pierson, Ryder & McHugh: December 20, 1985. Port Washington Properties v. Fireman's Fund Insurance Company. Complaint for Declaratory Judgment and/or Money Damages. Kitsap County Superior Court No. 85 2 01592 C. DNR Aquatic Resources Division lease jacket 22-002332 Folder 1. Only the complaint is in the DNR file.

In the complaint, Port Washington Properties noted that the City of Bremerton had investigated the situation and determined that the beach erosion had been caused by the dredging, and that the erosion was continuing. The City demanded that Port Washington Properties to undertake all measures necessary to correct the instability of the slope.⁴⁴

Figure 46



On June 23, 1986, the City of Bremerton sued Port Washington Properties for compensation for damages resulting from the marina dredging, and for the continuous trespass across the State issued sewer line easement.⁴⁵ The City claimed that

“The City formerly operated another sewer line running under the beach at the marina site which it has since abandoned in favor of the sewer line installed in

⁴⁴ Ibid, page. 16.

⁴⁵ City of Bremerton v. Port Washington Properties: June 23, 1986. Kitsap County Superior Court case 86 2 00901 1. DNR Aquatic Resources Division lease jacket 22-002332 Folder 1. Only the complaint in this case is in the DNR file.

1984. The City had intended to relocate the old sewer line but was forced to do so much earlier than planned because the beach had eroded and left these pipes exposed, threatening rupture. In drafting the original plans for the installation of the new pipeline, the City's Engineer relied on assertions made by PWP (Port Washington Properties) that riprap would be installed along the dredged banks of the marina slope to address potential erosion. The failure of PWP to install riprap resulting in an unanticipated rate of erosion and it was necessary to redesign the plans for the new sewer line."

The City noted that Port Washington Properties had installed some temporary protective measures that proved ineffective in controlling long term erosion. The City asserted that the mere installation of riprap could be insufficient to correct or prevent erosion on any long term or permanent basis. I have not found any other court documents in DNR files.

On December 2, 1986, Bill Philips of the DNR Engineering Division reported to John DeMeyer, Aquatic Lands Division Manager, about the Port Washington marina dredging impacts on the City of Bremerton sewer.⁴⁶ Philips summarized the chronology of the situation and his site inspection on November 12, 1986:

- "1983—Port Washington Marina dredged the toe of the beach to allow free float of their floating dock. City of Bremerton notices that beach erosion has uncovered their 8-inch sewer main; the line is undermined in some area, and the City feels a line failure may occur."
- "Late 1983—City of Bremerton replaces the existing 8-inch line with a new 12-inch line located near the toe of the bluff."
- "December 1983—Port Washington installs their docks."
- "Spring of 1984—Port Washington Marina installs filter fabric to the east portion of the beach to abate erosion and protect the boat house."
- "Fall of 1984—Port Washington Marina installs filter fabric to the remainder of the affected beach."

Philips observed that the existing beach material was composed of clay, silt and sand, and that the dredging operation had cut the beach slope at an angle in excess of the repose angle need to withstand the currents passing parallel to the shore. The attempts made by Port Washington to abate the erosion were unsuccessful, and that the fabric and ballast placed on the east end of the beach was intended to protect the existing boat house. He also observed that 2 to 6 inches of uniform erosion had occurred since placement of the erosion control.

Philips concluded:

" The dredging had some effect in exposing the City of Bremerton's sewer main. The Port Washington Marina acknowledged the beach erosion problem and made some attempt to abate any further loss of beach material. Their efforts were only

⁴⁶ Phillips, Bill: December 2, 1986. Memorandum to John DeMeyer, Aquatic Lands Division Manager. DNR Aquatic Resources Division Lease Jacket 22-002399.

marginally successful and the loss of material is continuing. To complete the abatement process, the cut slope needs to be trimmed, protected with new fabric, and covered with angular stone ranging in size from 10 to 12 inches. If erosion abatement is not completed, the beach will continue to degrade and undermine the bluff. If the bluff is undermined, the stability of the apartment building at the top of the bluff will be jeopardized."

On July 12, 1988, the Corps of Engineers published a public notice (071-OYB-2-012234) to stabilize "the beach and previously dredged slope at the Port Washington Marina, reduce the risk of undermining adjacent upland property, and protect a pressurized sewer line buried in the beach for the entire length of the project." In order to accomplish these purposes, 3,500 cubic yards of beach material would have to be dredged, and replace with a 2,300 cubic yard gravel filter and 2,200 yards of riprap. Additional gravel material would be placed landward of mean higher high water. Figure 47 was sheet 3 of 5 to this public notice, and is the excavation plan. Figure 48 was sheet 4 of 5 to the public notice, and is the fill plan.

Figure 47

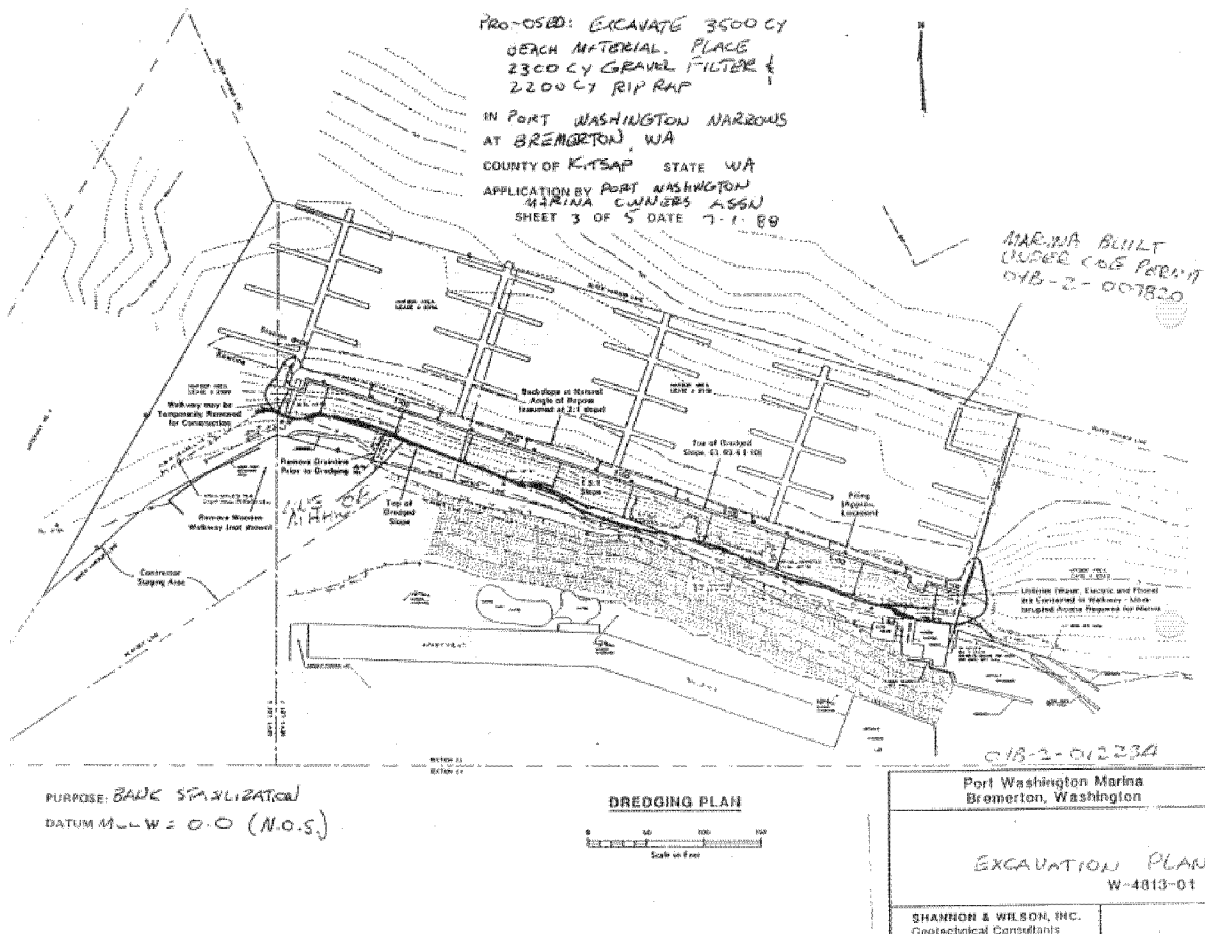


Figure 48

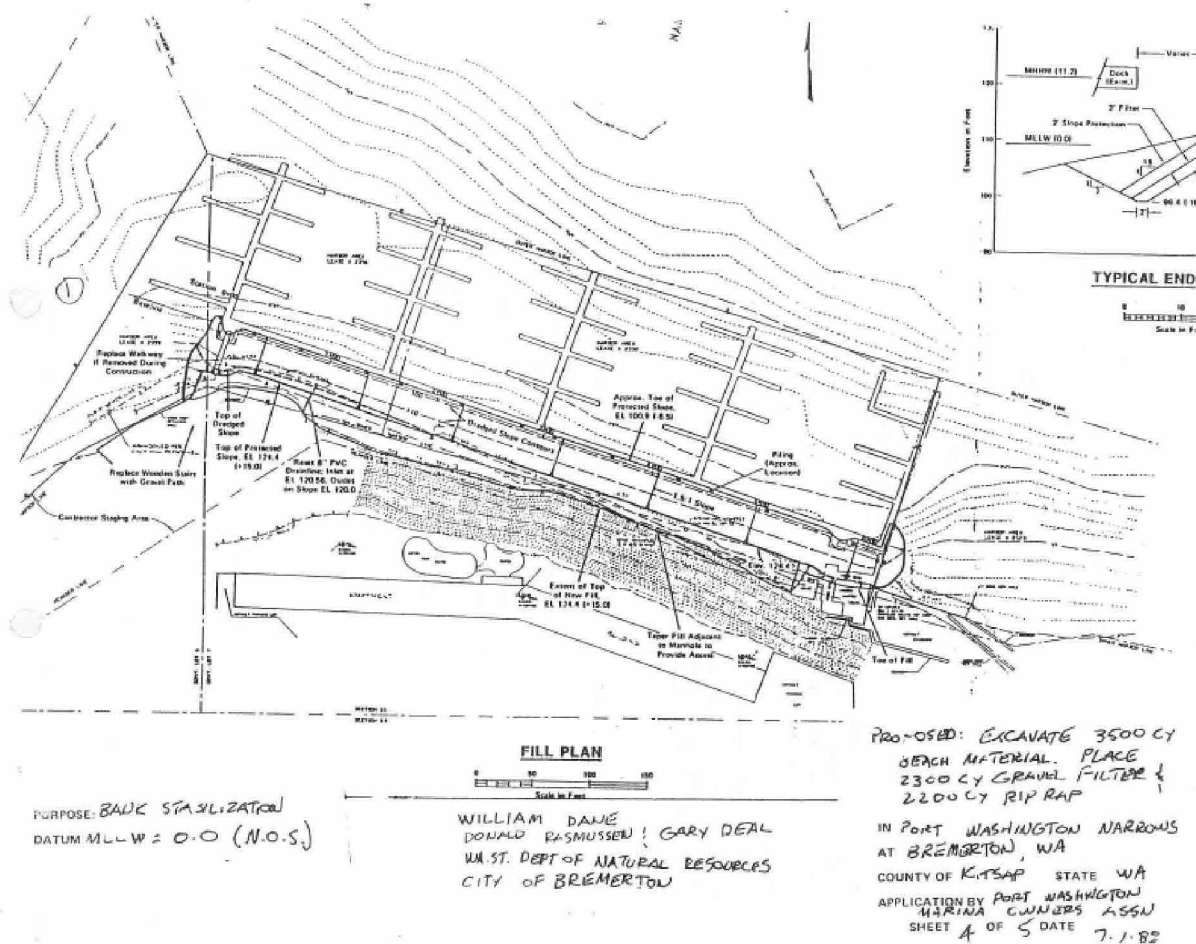


Figure 49:

Department of Ecology Shoreline Photo, shows the current condition of the marina and riprap



On August 6, 2009, DNR staff reported that

“the City of Bremerton maintains a stormwater pipe on the property under the staircase to the beach. The outfall is in poor condition and has obvious defects. Stephanie indicated that during major rain events that there can be oil sheens from the stormwater pipe.”⁴⁷

Attached to that memorandum was this photograph (Figure 55):



The record does not indicate which City sewer line it is, and what DNR actions were undertaken upon the discovery of this situation.

⁴⁷ Schmidt, Lindie: August 6, 2009. Memorandum to Donna Berube. DNR Aquatic Resources Lease Jacket 22-A02332.